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TRIAL

OF

WARREN HASTINGS, ESQ.

SATURDAY, 25th APRIL, 1789.

(MR. BURKE.)

MY LORDS,

WHEN I last had the honour of addressing your Lordships, I endeavoured to state with as much perspicuity as the nature of an intricate affair would admit, and as largely as in so intricate an affair was consistent with the brevity, which I endeavoured to preserve, the proofs, which had been adduced against Warren Hastings upon an inquiry, instituted by an order of the Court of Directors, into the corruption and peculation of persons in authority in India. My Lords, I have endeavoured to show you by anteriour presumptive proofs, drawn from the nature and circumstances of the acts themselves inferring guilt, that such actions and such conduct could be referrible only to one cause, namely, *corruption*. I endeavoured

to show you afterwards, my Lords, what the specifick nature and extent of the corruption was, as far as it could be fully proved: and lastly, the great satisfactory presumption, which attended the inquiry with regard to Mr. Hastings; namely, that contrary to law, contrary to his duty, contrary to what is owed by innocence to itself, Mr. Hastings resisted that inquiry, and employed all the power of his office to prevent the exercise of it, either in himself or in others. —These presumptions, and these proofs, will be brought before your Lordships, distinctly and in order, at the end of this opening.

The next point, on which I thought it necessary to proceed, was relative to the presumptions, which his subsequent conduct gave with regard to his guilt: because, my Lords, his uniform tenour of conduct, such as must attend guilt, both in the act, at the time of the inquiry, and subsequent to it, will form such a body of satisfactory evidence as, I believe, the human mind is not made to resist. My Lords, there is another reason why I choose to enter into the presumptions drawn from his conduct and the fact, taking his conduct in two parts, if it may be so expressed, *omission* and *commission*, in order that your Lordships should more fully enter into the consequences of this system of bribery.—But, before I say any thing upon

upon that, I wish your Lordships to be apprized, that the Commons, in bringing this bribe of three lack and a half before your Lordships, do not wish by any means to have it understood, that this is the whole of the bribe, that was received by Mr. Hastings in consequence of delivering up the whole management of the government of the country to that improper person, whom he nominated for it.

My Lords, from the proofs, that will be adduced before you, there is great probability, that he received very nearly a hundred thousand pounds: there is positive proof of his receiving fifty; and we have chosen only to charge him with that, of which there is such an accumulated body of proof as to leave no doubt upon the minds of your Lordships. All this I say, because we are perfectly apprized of the sentiments of the Publick upon this point: when they hear of the enormity of Indian peculation, when they see the acts done, and compare them with the bribes received, the acts seem so enormous, and the bribes comparatively so small, that they can hardly be got to attribute them to that motive. What I mean to state is this, that from a collective view of the subject your Lordships will be able to judge, that enormous offences have been committed, and that the bribe, which we have given in proof, is a specimen of the nature and extent of those enormous bribes;

which extend to much greater sums than we are able to prove before you in the manner your Lordships would like and expect.

I have already remarked to your Lordships, that after this charge was brought and recorded before the Council in spite of the resistance made by Mr. Hastings, in which he employed all the power and authority of his station, and the whole body of his partisans and associates in iniquity dispersed through every part of these provinces: after he had taken all these steps, finding himself pressed by the proof and pressed by the presumption of his resistance to the inquiry, he did think it necessary to make something like a defence. Accordingly he has made what he calls a justification, which did not consist in the denial of that fact, or any explanation of it. The mode he took for his defence was abuse of his colleagues, abuse of the witnesses, and of every person, who, in the execution of his duty, was inquiring into the fact; and charging them with things, which, if true, were by no means sufficient to support him, either in defending the acts themselves, or in the criminal means he used to prevent inquiry into them. His design was to mislead their minds, and to carry them from the accusation and the proof of it. With respect to the passion, violence, and intemperate heat, with which he charged them, they were proceeding

in

in an orderly regular manner, and if, on any occasion, they seem to break out into warmth, it was in consequence of that resistance, which he made to them, in what your Lordships, I believe, will agree with them in thinking was one of the most important parts of their functions. If they had been intemperate in their conduct; if they had been violent, passionate, prejudiced against him, it afforded him only a better means of making his defence, because, though in a rational and judicious mind, the intemperate conduct of the accuser certainly proves nothing with regard to the truth or falsehood of his accusation, yet we do know, that the minds of men are so constituted, that an improper mode of conducting a right thing does form some degree of prejudice against it. Mr. Hastings, therefore, unable to defend himself upon principle, has resorted as much as he possibly could to prejudice. And at the same time, that there is not one word of denial, or the least attempt at a refutation of the charge, he has loaded the records with all manner of minutes, proceedings, and letters relative to every thing but the fact itself. The great aim of his policy, both then, before, and ever since, has been to divert the mind of the auditory, or the persons, to whom he addressed himself, from the nature of his cause, to some collateral circumstance

relative to it: a policy, to which he has always had recourse; but that trick, the last resource of despairing guilt, I trust will now completely fail him.

Mr. Hastings, however, began to be pretty sensible, that this way of proceeding had a very unpromising and untoward look; for which reason he next declared, that he reserved his defence for fear of a legal prosecution: and that some time or other he would give a large and liberal explanation to the Court of Directors, to whom he was answerable for his conduct, of his refusing to suffer the inquiry to proceed,—of his omitting to give them satisfaction at the time,—of his omitting to take any one natural step, that an innocent man would have taken upon such an occasion. Under this promise he has remained from that time to the time you see him at your bar, and he has neither denied, exculpated, explained, or apologized for his conduct in any one single instance.

While he accuses the intemperance of his adversaries, he shows a degree of temperance in himself, which always attends guilt in despair; for struggling guilt may be warm, but guilt, that is desperate, has nothing to do but to submit to the consequences of it, to bear the infamy annexed to its situation, and to try to find some consolation in the effects of guilt with regard

to

to private fortune for the scandal it brings them into in public reputation. After the business had ended in India, the causes why he should have given the explanation grew stronger and stronger; for not only the charges exhibited against him were weighty, but the manner, in which he was called upon to inquire into them, was such as would, undoubtedly, tend to stir the mind of a man of character, to rouse him to some consideration of himself, and to a sense of the necessity of his defence. He was goaded to make this defence by the words I shall read to your Lordships from Sir John Clavering.

" In the late proceedings of the Revenue " Board it will appear, that there is no species " of peculation, from which the Honourable " Governour General has thought it reasonable " to abstain." He further says, in answer to Mr. Hastings, " The malicious view, with which " this innuendo (an innuendo of Mr. Hastings) " is thrown out, is only worthy of a man, who, " having disgraced himself in the eyes of every " man of honour both in Asia and in Europe, " and having no imputation to lay to our charge, " has dared to attempt in the dark what malice " itself could not find grounds to aim at " openly."

These are the charges, which were made upon

him—not loosely in the heat of conversation, but deliberately in writing, entered upon record, and sent to his employers the Court of Directors; those, whom the law had set over him, and to whose judgment and opinion he was responsible. Do your Lordships believe, that it was conscious innocence, that made him endure such reproaches, so recorded, from his own colleague? Was it conscious innocence, that made him abandon his defence, renounce his explanation, and bear all this calumny, if it was calumny, in such a manner without making any one attempt to refute it? Your Lordships will see by this and by other minutes, with which the books are filled, that Mr. Hastings is charged quite to the brim with corruptions of all sorts, and covered with every mode of possible disgrace; for, there is something so base and contemptible in the crimes of peculation and bribery, that when they come to be urged home and strongly against a man, as here they are urged, nothing but a consciousness of guilt can possibly make a person so charged support himself under them. Mr. Hastings considered himself, as he has stated, to be under the necessity of bearing them. What is that necessity? Guilt. Could he say, that Sir John Clavering (for I say nothing now of Colonel Monson and Mr. Francis, who were joined with him) was

a man

a man weak and contemptible? I believe there are those among your Lordships, who remember, that Sir John Clavering was known before he went abroad, and better known by his conduct after, to be a man of the most distinguished honour, that ever served His Majesty; he served His Majesty in a military situation for many years, and afterwards in that high civil situation in India. It is known, that through every step and gradation of a high military service, until he arrived at the highest of all, there never was the least blot upon him, or doubt, or suspicion of his character: that his temper for the most part, and his manners were fully answerable to his virtues, and a noble ornament to them; that he was one of the best natured, best bred men, as well as one of the highest principled men to be found in His Majesty's service; that he had passed the middle time of life, and come to an age, which makes men wise in general; so that he could be warmed by nothing but that noble indignation at guilt, which is the last thing, that ever was or will be extinguished in a virtuous mind. He was a man, whose voice was not to be despised; but, if his character had been personally as contemptible as it was meritorious and honourable in every respect, yet his situation as a Commissioner named by an Act of Parliament

for

for the express purpose of reforming India gave him a weight and consequence, that could not suffer Mr. Hastings, without a general and strong presumption of his guilt, to acquiesce in such recorded minutes from him. But if he had been a weak, if he had been an intemperate man—in reality he was as cool, steady, temperate, judicious a man as ever was born,—the Court of Directors, to whom Mr. Hastings was responsible by every tie and every principle, and was made responsible at last by a positive Act of Parliament obliging him to yield obedience to their commands as the general rule of his duty: the Court of Directors, I say, perfectly approved of every part of General Clavering's, Colonel Monson's, and Mr. Francis's conduct; they approved of this inquiry, which Mr. Hastings rejected, and they have declared, "That "the powers and instructions vested in and "given to General Clavering and the other "gentlemen were such as fully authorized them "in every inquiry, that seems to have been their "object† * * * * Europeans."

Now after the supreme authority, to which they were to appeal in all their disputes, had passed this judgment upon this very inquiry, the matter no longer depended upon Mr. Hastings's opinion; nor could he be longer justified in

† Document wanting.

in attributing that to evil motives either of malice or passion in his colleagues. When the Judges, who were finally to determine, who was malicious, who was passionate, who was or was not justified, either in setting on foot the inquiry or resisting it, had passed that judgment, then Mr. Hastings was called upon by all the feelings of a man, and by his duty in Council, to give satisfaction to his masters the Directors, who approved of the zeal and diligence shown in that very inquiry, the passion of which he only reprobated, and upon which he grounded his justification.

If any thing but conscious guilt could have possibly influenced him to such more than patience under this accusation, let us see what was his conduct, when the scene was changed. General Clavering, fatigued and broken down by the miseries of his situation, soon afterwards lost a very able and affectionate colleague, Colonel Monson (whom Mr. Hastings states to to be one of the bitterest of his accusers) a man one of the most loved and honoured of his time; a person of your Lordships noble blood, and a person, who did honour to it, and if he had been of the family of a commoner, well deserved to be raised to your distinction. When that man died—died of a broken heart, to say nothing else, and General Clavering felt himself

himself in a manner without help, except what he derived from the firmness, assiduity, and patience of Mr. Francis, sinking like himself under the exertion of their own virtues, he was resolved to resign his employment. The Court of Directors were so alarmed at this attempt of his to resign his employment, that they wrote thus: "When you conceived the design of "quitting our service, we imagine you could "not have heard of the resignation of Mr. "Hastings† * * * * * your zeal "and ability."

My Lords, in this struggle, and before he could resign finally, another kind of resignation, the resignation of nature, took place, and Sir John Clavering died. The character, that was given Sir John Clavering at that time, is a seal to the whole of his proceedings, and the use, that I shall make of it, your Lordships will see presently. "The abilities of General Clavering, the comprehensive knowledge he had attained of our affairs‡, * * * * * * * * to the East India Company."

And never had it a greater loss. There is the concluding funeral oration made by his masters upon a strict, though by no means partial, view of his conduct. My Lords, here is the man, who is the great accuser of Mr. Hastings,

as

† Document wanting. ‡ Document wanting.

he says: what is he? a slight man, a man of mean situation, a man of mean talents, a man of mean character? No, of the highest character. Was he a person, whose conduct was disapproved by their common superiours? No, it was approved when living, and ratified when dead. This was the man, a man equal to him in every respect, upon the supposed evil motives of whom alone was founded the sole justification of Mr. Hastings.

But, be it then, that Sir John Clavering, Colonel Monson, and Mr. Francis, were all of them the evil-minded persons, that he describes them to be; and that from dislike to them, from a kind of manly resentment, if you please, against such persons, an hatred against malicious proceedings, and a defiance of them, he did not think proper, as he states, to make his defence during that period of time, and while oppressed by that combination, yet, when he got rid of the two former persons, and when Mr. Francis was nothing; when the whole majority was in his hand, and he was in full power, there was a large open full field for inquiry; and he was bound to re-institute that inquiry, and to clear his character before his judges and before his masters. Mr. Hastings says, No; they have threatened me with a prosecution, and I reserve myself for a court of justice.

Mr.

Mr. Hastings has now at length taken a ground, as you will see from all his writings, which makes all explanation of his conduct in this business absolutely impossible. For, in the first place, he says, as a prosecution is meditated against me, I will say nothing in explanation of my conduct, because I might disclose my defence, and, by that means, do myself a prejudice. On the other hand, when the prosecution is dropped, as we all know it was dropped in this case, then he has a direct contrary reason, but it serves him just as well. Why, as no prosecution is intended, no defence need be made: so that whether a prosecution is intended, or a prosecution dropped, there is always cause, why Mr. Hastings should not give the Court of Directors the least satisfaction concerning his conduct, notwithstanding, as we shall prove, he has reiteratedly promised, and promised it in the most ample and liberal manner. But, let us see if there be any presumption in his favour to rebut the presumption, which he knew was irresistible, and which by making no defence for his conduct, and stopping the inquiry, must necessarily lie upon him. He reserves his defence, but he promises both defence and explanation.

Your Lordships will remark, that there is no where a clear and positive denial of the fact. Promising a defence, I will admit, does not directly

rectly and *ex vi termini* suppose, that a man may not deny the fact, because it is just compatible with the defence, but it does by no means exclude the admission of the fact, because the admission of the fact may be attended with a justification; but, when a man says, that he will explain his conduct with regard to a fact, then he admits that fact, because there can be no explanation of a fact, which has no existence. Therefore, Mr. Hastings admits the fact by promising an explanation, and he shows he has no explanation nor justification to give by never having given it. Goaded, provoked, and called upon for it in the manner I have mentioned, he chooses to have a feast of disgrace, if I may say so; to have a riot of infamy served up to him day by day for a course of years in every species of reproach, that could be given by his colleagues, and by the Court of Directors, from whom, he says, I received nothing but opprobrious and disgraceful epithets, and he says, "that his predecessors possessed more of their confidence than he had."

Yet, for years, he lay down in that sty of disgrace, fattening in it; feeding upon that offal of disgrace and excrement, upon every thing, that could be disgustful to the human mind, rather than deny the fact, and put himself upon a civil justification. Infamy was never incurred for

for nothing. We know very well what was said formerly,

> "Populus me sibilat; at mihi plaudo
> Ipse domi, simul ac nummos contemplor in arcâ."

And never did a man submit to infamy for any thing but its true reward, *money*. Money he received, the infamy he received along with it; he was glad to take his wife with all her goods; he took her with her full portion; with every species of infamy, that belonged to her; and your Lordships cannot resist the opinion, that he would not have suffered himself to be disgraced with the Court of Directors, disgraced with his colleagues, disgraced with the world, disgraced upon an eternal record, unless he was absolutely guilty of the fact, that was charged upon him.

He frequently expresses, that he reserves himself for a court of justice. Does he, my Lords? I am sorry, that Mr. Hastings should show, that he always mistakes his situation; he has totally mistaken it: he was a servant bound to give a satisfactory account of his conduct to his masters; and instead of that he considers himself and the Court of Directors as litigant parties, them as the accusers, and himself as the culprit. What would your Lordships in private life conceive of a steward, who was accused of embezzling the rents, robbing and oppressing the tenants, and committing a thousand misdeeds in his

his stewardship, and who upon your wishing to make inquiry into his conduct, and asking an explanation of it, should answer, I will give no reply: you may intend to prosecute me, and convict me, as a cheat, and therefore I will not give you any satisfaction; what would you think of that steward? You could have no doubt, that such a steward was a person not fit to be a steward, nor fit to live.

Mr. Hastings reserves himself for a court of justice; that single circumstance, my Lords, proves, that he was guilty. It may appear very odd, that his guilt should be inferred from his desire of trial in a court, in which he could be acquitted or condemned. But I shall prove to you from that circumstance, that Mr. Hastings, in desiring to be tried in a court of justice, convicts himself of presumptive guilt.

When Mr. Hastings went to Bengal in the year 1772, he had a direction exactly similar to this, which he has resisted in his own case; it was to inquire into grievances and abuses. In consequence of this direction he proposes a plan for the regulation of the Company's service, and one part of that plan was just what you would expect from him, that is, the power of destroying every Company's servant without the least possibility of his being heard in his own defence, or taking any one step to justify himself, and

of dismissing him at his own discretion: and the reason he gives for it is this: "I shall forbear "to comment upon the above propositions: if "just and proper their utility will be self appa- "rent: one clause only in the last article may "require some explanation, namely, the power "proposed for the Governour of recalling any "person from his station without assigning a rea- "son for it. In the charge of oppression" (now here you will find the reason, why Mr. Hastings wishes to appeal to a court of justice, rather than to give satisfaction to his employers) "though "supported by the cries of the people, and the "most authentic representations, it is yet im- "possible in most cases to obtain legal proofs "of it; and unless the discretionary power, "which I have recommended, be somewhere "lodged, the assurance of impunity from any "formal inquiry will baffle every order of the "Board, as, on the other hand, the fear of the "consequence will restrain every man within "the bounds of his duty, if he knows himself "liable to suffer by the effects of a single "control." You see Mr. Hastings himself is of opinion, that the cries of oppression, though extorted from a whole people by the iron hand of severity: that these cries of a whole people attended even with authentick documents, sufficient to satisfy the mind of any man, may be totally

totally insufficient to convict the oppressour in a court; and yet to that court, whose competence he denies, to that very court he appeals, in that he puts his trust, and upon that ground he refuses to perform the just promise he had given of any explanation to those, who had employed him.

Now I put this to your Lordships; if a man is of opinion, that no publick court can truly and properly bring him to any account for his conduct; that the forms observable in courts are totally adverse to it; that there is a general incompetency with regard to such a court; and yet shuns a tribunal capable and competent, and applies to that, which he thinks is incapable and incompetent, does not that man plainly show, that he has rejected what he thinks will prove his guilt, and that he has chosen what he thinks will be utterly insufficient to prove it? And if this be the case, as he asserts it to be, with an under servant, think what must be the case of the upper servant of all; for, if an inferiour servant is not to be brought to justice, what must be the situation of a Governour General? It is impossible not to see, that, as he had conceived, that a court of justice had not sufficient means to bring his crimes to light and detection, nor sufficient to bring him to proper and adequate punishment, therefore he flew to a court of

justice, not as a place to decide upon him, but as a sanctuary to secure his guilt. Most of your Lordships have travelled abroad, and have seen in the unreformed countries of Europe churches filled with persons, who take sanctuary in them. You do not presume, that a man is innocent because he is in a sanctuary; you know, that so far from demonstrating his innocence it demonstrates his guilt; and, in this case, Mr. Hastings flies not to a court for trial, but as a sanctuary to secure him from it.

Let us just review the whole of his conduct; let us hear how Mr. Hastings has proceeded with regard to this whole affair. The court of justice dropped; the prosecution in Bengal ended. With Sir Elijah Impey, as Chief Justice, who as your Lordships have seen had a most close and honourable connexion with the Governour General (all the circumstances of which I need not detail to you, as it must be fresh in your Lordships' memory) he had not much to fear from the impartiality of the court. He might be sure the forms of law would not be strained to do him mischief; therefore there was no great terrour in it; but whatever terrour there might be in it was overblown, because his colleagues refused to carry him into it, and therefore that opportunity of defence is gone. In Europe he was afraid of making any defence,

but

but the prosecution here was also soon over; and in the House of Commons he takes this ground of justification for not giving any explanation, that the Court of Directors had received perfect satisfaction of his innocence; and he named persons of great and eminent character in the profession, whose names certainly cannot be mentioned without highly imposing upon the prejudices and weighing down almost the reason of mankind. He quotes their opinions in his favour, and argues, that the exculpation, which they give, or are supposed to give him, should excuse him from any further explanation.

My Lords, I believe I need not say to great men of the profession, many of the first ornaments of which I see before me, that they are very little influenced in the seat of judgment by the opinions, which they have given in the chamber, and they are perfectly in the right; because while in the chamber they hear but one part of the cause; it is generally brought before them in a very partial manner, and they have not the lights, which they possess, when they sit deliberately down upon the tribunal to examine into it; and for this reason they discharge their minds from every prejudice, that may have arisen from a foregone partial opinion, and come uninfluenced by it as to a new cause. This, we know, is the glory of the great lawyers,

who have presided, and do preside, in the tribunals of this country; but we know at the same time, that those opinions (which they in their own mind reject, unless supported afterwards by clear and authentick testimony) do weigh upon the rest of mankind at least; for it is impossible to separate the opinion of a great and learned man from some consideration of the person, who has delivered that opinion.

Mr. Hastings being conscious of this, and not fearing the tribunal abroad for the reason, that I gave you, namely, his belief, that it was not very adverse to him; and also knowing, that the prosecution there was dropped, had but one thing left for his consideration, which was, how he should conflict with the tribunal at home: and, as the prosecution must originate from the Court of Directors, and be authorized by some great law opinions, the great point with him was, some way or other by his party, I will not say by what means or circumstances, but by some party means, to secure a strong interest in the executive part of the India House. My Lords, was that interest used properly and fairly? I will not say, that friendship and partiality imply injustice; they certainly do not; but they do not imply justice. The Court of Directors took up this affair with great warmth; they committed it to their solicitor, and the solicitor

licitor would naturally (as most solicitors do) draw up a case a little favourably for the persons, that employed him; and if there was any leaning, which upon my word I do not approve in the management of any cause whatever, yet if there was a leaning, it must be a leaning for the client.

Now the counsel did not give a decided opinion against the prosecution, but, upon the face of the case, they expressed great doubts upon it; for with such a strange, disorderly, imperfect, and confused case, as was laid before them, they could not advise a prosecution: and, in my opinion, they went no further; and indeed upon that case, that went before them, I, who am authorized by the Commons to prosecute, do admit, that a great doubt might lie upon the most deciding mind, whether, under the circumstances there stated, a prosecution could be or ought to be pursued. I do not say, which way my mind would have turned upon that very imperfect state of the case; but I still allow so much to their very great ability, great minds, and sound judgment, that I am not sure, if it was *res integra*, I would not have rather hesitated myself (who am now here an accuser) what judgment to give.

It does happen, that there are very singular circumstances in this business, to which your

Lordships will advert; and you will consider, what weight they ought to have upon your Lordships minds. The person, who is now the solicitor of the Company, is a very repectable man in the profession—Mr. Smith; he was at that time also the Company's solicitor, and he has since appeared in this cause as Mr. Hastings's solicitor. Now there is something particular in a man's being the solicitor to a party, who was prosecuting another, and continuing afterwards in his office, and becoming the solicitor to the party prosecuted. It would be nearly as strange, as if our solicitor were to be the solicitor of Mr. Hastings in this prosecution and trial before your Lordships. It is true, that we cannot make out, nor do we attempt to prove, that Mr. Smith was, at that time, actually Mr. Hastings's solicitor: all that we shall attempt to make out is, that the case he produced was just such a case, as a solicitor, anxious for the preservation of his client, and not anxious for the prosecution, would have made out. My Lords, I have next to remark, that the opinion, which the counsel gave in this case, namely, a very doubtful opinion accompanied with strong censure of the manner, in which the case was stated, was drawn from them by a case, in which, I charge, that there were *misrepresentation, suppression,* and *falsification.*

Now,

Now, my Lords, in making this charge I am in a very awkward and unpleasant situation; but it is a situation, in which, with all the disagreeable circumstances attending it, I must proceed. I am, in this business, obliged to name many men: I do not name them wantonly, but from the absolute necessity, as your Lordships will see, of the case. I do not mean to reflect upon this gentleman; I believe, at the time when he made this case, and especially the article, which I state as a *falsification*, he must have trusted to some of the servants of the Company, who were but young in their service at that time. There was a very great errour committed, but by whom, or how, your Lordships in the course of this inquiry will find. What I charge first is, that the case was improperly stated; 2dly, that it was partially stated; and that, afterwards, a further report was made upon reference to the same officer in the Committee. Now, my Lords, of the three charges, which I have made, the two former, namely, the misrepresentation, and suppression, were applicable to the case; but all the three, misrepresentation, suppression, and falsification, were applicable to the report.

This I say in vindication of the opinions given, and for the satisfaction of the Publick, who may be imposed upon by them. I wish the word to be

be understood: when I say *imposed*, I always mean by it the weight and authority carried; a meaning, which this word perhaps has not got yet thoroughly in the English language; but in a neighbouring language *imposing* means, that it weighs upon men's minds with a sovereign authority. To say, that the opinions of learned men, though even thus obtained, may not have weight with this Court, or with any Court, is a kind of compliment I cannot pay to them at the expense of that common nature, in which I and all human beings are involved.

He states in the case the covenants and the salary of Mr. Hastings, and his emoluments, very fairly. I do not object to any part of that. He then proceeds to state very partially the business, upon which the Committee of Circuit went, and without opening whose conduct we cannot fully bring before you this charge of bribery. He then states, "That an inquiry "having been made by the present Supreme "Council of Bengal, respecting the conduct of "the members of the last administration, seve-"ral charges have been made, stating monies "very improperly received by Mr. Hastings "during the time of the late administration; "amongst these is one, of his having received "150,000 rupees of Munny Begum, the guar-"dian of the Nabob, who is an infant."

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In this statement of the case every thing is put out of its true place. Mr. Hastings was not charged with receiving a lack and a half of rupees from Munny Begum, the guardian of the Nabob, for she was not then his guardian; but he was charged with receiving a lack and a half of rupees for removing the Nabob's own mother, who was his natural guardian, and substituting this step-mother, who was a prostitute, in her place; whereas here it supposes he found her a guardian, and that she had made him a present, which alters the whole nature of the case. The case, in the recital of the charge, sets out with what every one of your Lordships knows now not to be the truth of the fact, nor the thing, that in itself implies the criminality: he ought to have stated that in the beginning of the business. The suppressions in the recital are amazing: he states an inquiry having been made by the Supreme Council of Bengal respecting the conduct of the members of the last administration. That inquiry was made in consequence of the charge, and not the charge brought forwards, as they would have it believed, in consequence of the inquiry. There is no mention, that that inquiry had been expressly ordered by the Court of Directors; but it is stated, as though it was a voluntary inquiry. Now there is always something doubtful in voluntary

luntary inquiries with regard to the people concerned. He then supposes upon this inquiry that to be the charge, which is not the charge at all. The crime, as I have stated, consisted of two distinct parts, but both inferring the same corruption: the first, two lack of rupees taken expressly for the nomination of this woman to this place, and the other, one lack and a half of rupees, in effect for the same purpose, but under the name and colour of an entertainment. The drawer of the case finding, that in the one case, namely, the two lack of rupees, the evidence was more weak, but that no justification could be set up; finding in the other, the lack and an half of rupees, the proof strong, and not to be resisted, but that some justification was to be found for it, lays aside the charge of the two lack totally; and the evidence belonging to it, which was considered as rather weak, is applied to the other charge of a lack and a half, the proof of which upon its own evidence was irresistible.

My speech, I hope, your Lordships consider as only pointing out to your attention these particulars. Your Lordships will see it exemplified throughout the whole, that when there is evidence, (for some evidence is brought) that does belong to the lack and a half, it is entirely passed by, the most material circumstances are weakened,

weakened, the whole strength and force of them taken away. Every one knows how true it is of evidence, *juncta juvant:* but here every thing is broken and smashed to pieces, and nothing but disorder appears through the whole. For your Lordships will observe, that the proof, that belongs to one thing, is put as belonging to another, and the proof of the other brought in a weak and imperfect manner in the rear of the first, and with every kind of observation to rebut and weaken it; and when this evidence is produced, which appears inapplicable almost in all the parts, in many doubtful, confused, and perplexed, and in some even contradictory, which it will be, when the evidence to one thing is brought to apply and bear upon another: good hopes were entertained in consequence, that that would happen, which in part did happen, namely, that the counsel distracted and confused, and finding no satisfaction in the case, could not advise a prosecution.

But what is still more material and weighty, many particulars are suppressed in this case, and still more in the report; and turning from the case to the proceedings of the persons, who are supposed to have the management of the inquiry, they bring forward, as an appendix to this case, Mr. Hastings's own invectives and charge against these persons at the very same time,

time, that they suppress and do not bring forward, either in the charge or upon the report, what the other party have said in their own justification. The consequence of this management was, that a body of evidence, which would have made this case the clearest in the world, and which I hope we shall make to appear so to your Lordships, was rendered for the most part inapplicable, and the whole puzzled and confused: I say, for the most part, for some parts did apply, but miserably applied, to the case. From their own state of the case they would have it inferred, that the fault was not in their way of representing it, but in the infirmity, confusion, and disorder of the proofs themselves; but this, I trust, we shall satisfy you is by no means the case. I rest, however, upon the proof of partiality in this business, of the imposition upon the counsel, whether designed or not, and of the bias given by adding an appendix with Mr. Hastings's own remarks upon the case, without giving the reasons of the other parties for their conduct. Now, if there was nothing else than the fallacious recital, and afterwards the suppression, I believe any rational and sober man would see perfect, good, and sufficient ground for laying aside any authority, that can be derived from the opinions of persons, though of the first character: (and, I

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am sure, no man living does more homage to their learning, impartiality, and understanding, than I do:) first, because the statement of the case has thrown the whole into confusion; and secondly, as to the matter, added as an appendix, which gives the representation of the delinquent, and omits the representation of his prosecutors, it is observed very properly and very wisely by one of the great men, before whom this evidence was laid, that "The evidence, as "it is here stated, is still more defective, if the "appendix is adopted by the Directors, and "meant to make a part of the case. For that "throws discredit upon all the information so "collected." Certainly it does; for if the delinquent party, who is to be prosecuted, be heard with his own representation of the case, and that of his prosecutors be suppressed, he is master both of the lawyers, and of the mind of mankind.

My Lords, I have here attempted to point out the extreme inconsistencies and defects of this proceeding; and I wish your Lordships to consider, with respect to these proceedings of the India House in their prosecutions, that it is in the power of some of their officers to make statements in the manner, that I have described, then to obtain the names of great lawyers, and

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under their sanction to carry the accused through the world as acquitted.

These are the material circumstances, which will be submitted to your Lordships' sober consideration in the course of this inquiry. I have now stated them on these two accounts: first, to rebut the reason, which Mr. Hastings has assigned for not giving any satisfaction to the Court of Directors, namely, because they did not want it, having dropped a prosecution upon great authorities and opinions: and next, to show your Lordships, how a business, begun in bribery, is to be supported only by fraud, deceit, and collusion: and how the receiving of bribes by a Governour General of Bengal tends to taint the whole service from beginning to end, both at home and abroad.

But though upon the partial case, that was presented to them, these great lawyers did not advise a prosecution; and though even upon a full representation of a case a lawyer might think, that a man ought not to be prosecuted, yet he may consider him to be the vilest man upon earth. We know, men are acquitted in the great tribunals, in which several Lords of this country have presided, and who, perhaps, ought not to have been brought there, and prosecuted before them, and yet about whose delinquency

linquency there could be no doubt. But though we have here sufficient reason to justify the great lawyers, whose names and authorities are produced, yet Mr. Hastings has extended that authority beyond the length of their opinions. For being no longer under the terrour of the law, which, he said, restrained him from making his defence, he was then bound to give that satisfaction to his masters and the world, which every man in honour is bound to do, when a grave accusation is brought against him. But this business of the law I wish to sleep from this moment, till the time when it shall come before you; though I suspect, and have had reason (sitting in committees in the House of Commons) to believe, that there was in the India House a bond of iniquity, somewhere or other, which was able to impose in the first instance upon the solicitor, the guilt of which being of another nature I shall state hereafter, that your Lordships may be able to discover, through whose means, and whose fraud, Mr. Hastings obtained these opinions.

If, however, all the great lawyers had been unanimous upon that occasion, still it would have been necessary for Mr. Hastings to say, I cannot, according to my opinion, be brought to give an account in a court of justice, and I have got great lawyers to declare, that upon

the case laid before them they cannot advise a prosecution; but now is the time for me to come forward, and being no longer in fear, that my defence may be turned against me, I will produce my defence for the satisfaction of my masters, and the vindication of my own character. But besides this doubtful opinion, for I believe your Lordships will find it no better than a doubtful opinion, given by persons, for whom I have the highest honour, and given with a strong censure upon the state of the case, there were also some great lawyers, men of great authority in the kingdom, who gave a full and decided opinion, that a prosecution ought to be instituted against him; but the Court of Directors decided otherwise, they over-ruled those opinions, and acted upon the opinions in favour of Mr. Hastings. When, therefore, he knew, that the great men in the law were divided upon the propriety of a prosecution, but that the Directors had decided in his favour, he was the more strongly bound to enter into a justification of his conduct.

But there was another great reason, which should have induced him to do this; one great lawyer, known to many of your Lordships, Mr. Sayer, a very honest intelligent man, who had long served the Company, and well knew their affairs, had given an opinion concerning Mr. Hastings's

Hastings's conduct in stopping these prosecutions. There was an abstract question put to Mr. Sayer, and other great lawyers, separated from many of the circumstances of this business, concerning a point, which incidentally arose; and this was, whether Mr. Hastings, as Governour General, had a power so to dissolve the Council, that, if he declared it dissolved, they could not sit, and do any legal and regular act. It was a great question with the lawyers at the time, and there was a difference of opinion on it. Mr. Sayer was one of those, who were inclined to be of opinion, that the Governour General had a power of dissolving the Council, and that the Council could not legally sit after such dissolution: but what was his remark upon Mr. Hastings's conduct? and you must suppose his remark of more weight, because, upon the abstract question, he had given his opinion in favour of Mr. Hastings's judgment. "The meeting of the Council depends on the pleasure of the Governour; and I think the duration of it must do so too. But it was as great a crime to dissolve the Council upon base and sinister motives, as it would be to assume the power of dissolving, if he had it not. I believe, he is the first Governour, that ever dissolved a Council inquiring into his behaviour, when he was innocent. Before he could sum-

mon three Councils, and dissolve them, he had time fully to consider what would be the result of such conduct, *to convince every body, beyond a doubt, of his conscious guilt.*"

Mr. Sayer, then, among other learned people (and if he had not been the man, that I have described, yet from his intimate connection with the Company his opinion must be supposed to have great weight) having used expressions as strong as the persons, who have ever criminated Mr. Hastings most for the worst of his crimes, have ever used to qualify and describe them, and having ascribed his conduct to base and sinister motives, he was bound upon that occasion to justify that strong conduct allowed to be legal, and charged, at the same time, to be violent. Mr. Hastings was obliged then to produce something in his justification: he never did. Therefore, for all the reasons assigned by himself, drawn from the circumstances of prosecution and non-prosecution, and from opinions of lawyers and colleagues; the Court of Directors at the same time censuring his conduct, and strongly applauding the conduct of those, who were adverse to him, Mr. Hastings was, I say, from those accumulated circumstances, bound to get rid of the infamy of a conduct, which could be attributed to nothing but base and sinister motives, and which could have no effect but to convince

convince men of his consciousness, that he was guilty. From all these circumstances I infer, that no man could have endured this load of infamy, and, to this time, have given no explanation of his conduct, unless for the reason, which this learned counsel gives, and which your Lordships, and the world will give, namely, his conscious guilt.

After leaving upon your minds that presumption, not to operate without proof, but to operate along with the proof (though, I take it, there are some presumptions, that go the full length of proof) I shall not press it to the length, to which I think it would go, but use it only as auxiliary, assisting, and compurgatory of all the other evidences, that go along with it.

There is another circumstance, which must come before your Lordships in this business. If you find, that Mr. Hastings has received the two lack of rupees, then you will find, that he was guilty, without colour or pretext of any kind whatever, of acting in violation of his covenant, of acting in violation of the laws, and all the rules of honour and conscience. If you find, that he has taken the lack and a half, which he admits, but which he justifies under the pretence of an entertainment, I shall beg to say something to your Lordships concerning that justification.

The justification set up is, that he went up

from Calcutta to Moorshedabad, and paid a visit of three months, and that there an allowance was made to him of two hundred pounds a day in lieu of an entertainment. Now, my Lords, I leave it to you to determine, if there was such a custom, whether or no his covenant justifies his conformity with it. I remember Lord Coke, talking of the *Brehon* law in Ireland, says, it is no law but a lewd custom. A governour is to conform himself to the laws of his own country, to the stipulations of those, that employ him, and not to the lewd customs of any other country: those customs are more honoured in the breach than in the observance. If Mr. Hastings was really feasted and entertained with the magnificence of the country, if there was an entertainment of dancing girls brought out to amuse him in his leisure hours, if he was feasted with the *hooka* and every other luxury, there is something to be said for him, though I should not justify a Governour General wasting his days in that manner. But in fact here was no entertainment, that could amount to such a sum; and he has no where proved the existence of such a custom.

But if such a custom did exist, which I contend is more honoured in the breach than in the observance, that custom is capable of being abused to the grossest extortion; and that it

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was so abused, will strike your Lordships' minds in such a manner, that I hardly need detail the circumstances of it. What! 200*l.* to be given to a man for one day's entertainment? If there is an end of it there, it ruins nobody, and cannot be supposed, to a great degree, to corrupt any body; but, when that entertainment is renewed, day after day, for three months, it is no longer a compliment to the man, but a great pecuniary advantage; and, on the other hand, to the person giving it, a grievous, an intolerable burden. It then becomes a matter of the most serious and dreadful extortion, tending to hinder the people who give it, not only from giving entertainment, but from having bread to eat themselves. Therefore, if any such entertainment was customary, the custom was perverted by the abuse of its being continued for three months together. It was longer than Ahasuerus's feast. There is a feast of reason and a flow of soul; but Mr. Hastings's feast was a feast of avarice, and a flow of money: no wonder he was unwilling to rise from such a table; he continued to sit at that table for three months.

In his covenant he is forbidden expressly to take any allowance above 400*l.* and forbidden to take any allowance above 100*l.* without the knowledge, consent, and approbation of the Council to which he belongs:—now, he takes

men light up when they mean to express great joy and great magnificence for a great event, their very splendour is a part of their excellence. We upon our feasts light up this whole capital city; we in our feasts invite all the world to partake them. Mr. Hastings feasts in the dark; Mr. Hastings feasts alone; Mr. Hastings feasts like a wild beast; he growls in the corner over the dying and the dead, like the tigers of that country, who drag their prey into the jungles. Nobody knows of it, till he is brought into judgment for the flock he has destroyed. His is the entertainment of Tantalus; it is an entertainment from which the sun hid his light.

But was it an entertainment upon a visit? Was Mr. Hastings upon a visit? No; he was executing a commission for the Company in a village in the neighbourhood of Moorshedabad, and by no means upon a visit to the Nabob. On the contrary, he was upon something, that might be more properly called a *visitation:* he came as a heavy calamity, like a famine or a pestilence on a country; he came there to do the severest act in the world, as he himself expresses, to take the bread—literally the bread, from above a thousand of the nobles of the country, and to reduce them to a situation, which no man can hear of without shuddering. When you consider, that, while he was thus entertained himself,

himself, he was famishing fourteen hundred of the nobility and gentry of the country, you will not conceive it to be any extenuation of his crimes, that he was there, not upon a visit, but upon a duty the harshest, that could be executed, both to the persons, who executed, and the people, who suffered from it.

It is mentioned and supposed in the observations upon this case, though no circumstances relative to the person, or the nature of the visit, are stated, that this expense was something, which he might have charged to the Company, and did not. It is first supposed by the learned counsel, who made the observation, that it was a publick, allowed, and acknowledged thing; then, that he had not charged the Company any thing for it. I have looked into that business: in the first place, I see no such custom; and if there was such a custom, there was the most abusive misemployment of it. I find, that in that year there was paid from the Company's cash account to the Governour's travelling charges (and he had no other journey at that end of the year) thirty thousand rupees, which is about 8,000*l.*; and when we consider, that he was in the receipt of near 30,000*l.* besides the nazzers, which amount to several thousand a year, and that he is allowed 3,000*l.* by the Company for his travelling expenses;—is it right to charge

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upon the miserable people, whom he was defrauding of their bread, 16,000*l.* for his entertainment?

I find, that there are also other great sums relative to the expenses of the Committee of Circuit, which he was upon. How much of them is applicable to him, I know not. I say, that the allowance of 8,000*l.* was noble and liberal; for it is not above a day or two's journey to Moorshedabad, and by his taking his road by Kissenagore he could not be longer. He had a salary to live upon, and he must live somewhere; and he was actually paid 3,000*l.* for travelling charges for three months, which was at the rate of 12,000*l.* a year—a large and abundant sum.

If you once admit, that a man for an entertainment shall take sixteen thousand pounds, there never will be any bribe, any corruption, that may not be justified; the corrupt man has nothing to do but to make a visit, and then that very moment he may receive any sum under the name of this entertainment; that moment his covenants are annulled, his bonds and obligations destroyed, the Act of Parliament repealed, and it is no longer bribery; it is no longer corruption, it is no longer peculation; it is nothing but thanks for obliging inquiries, and a compliment

a compliment according to the mode of the country, by which he makes his fortune.

What hinders him from renewing that visit? If you support this distinction, you will teach the Governour General, instead of attending his business at the capital, to make journeys through the country, putting every great man of that country under the most ruinous contributions; and as this custom is in no manner confined to the Governour General, but extends, as it must upon that principle, to every servant of the Company in any station whatever, then, if each of them were to receive an entertainment, I will venture to say, that the greatest ravage of an hostile army could not indeed destroy the country more entirely than the Company's servants by such visits.

Your Lordships will see, that there are grounds for suspicion, not supported with the same evidence, but with evidence of great probability, that there was another entertainment given at the expense of another lack of rupees; and there is also great probability, that Mr. Hastings received two lack of rupees, and Mr. Middleton another lack. The whole of the Nabob's revenues would have been exhausted by these two men, if they had staid there a whole year, and they staid three months. Nothing will be secured

cured from the Company's servants, so long as they can find, under this name, or under pretence of any corrupt custom of the country, a vicious excuse for this corrupt practice. The excuse is worse than the thing itself. I leave it then with your judgment to decide, whether you will or not (if this justification comes before you) establish a principle, which would put all Bengal in a worse situation than an hostile army could do, and ruin all the Company's servants by sending them from their duty to go round robbing the whole country under the name of entertainments.

My Lords, I have now done with this first part; namely, the presumption arising from his refusal to make any defence on pretence, that the charge brought against him might be referred to a court of justice, and from the non-performance of his promise to give satisfaction to his employers; and when that pretence was removed, still refusing to give that satisfaction, though suffering as he did under a load of infamy and obloquy, and though urged to give it by persons of the greatest character. I have stated this to your Lordships as the strongest presumption of guilt, and that this presumption is strengthened by the very excuse, which he fabricated for a part of his bribes, when he knew, that the proof of them was irresistible, and that

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this excuse is a high aggravation of his guilt; that this excuse is not supported by law, that it is not supported by reason, that it does not stand with his covenant, but carries with it a manifest proof of corruption; and that it cannot be justified by any principle, custom, or usage whatever. My Lords, I say I have done with the presumption arising from his conduct as it regarded the fact specifically charged against him, and with respect to the relation he stood in to the Court of Directors, and from the attempt he made to justify that conduct. I believe your Lordships will think both one and the other strong presumptions of his criminality, and of his knowledge, that the act he was doing was criminal.

I have another fact to lay before your Lordships, which affords a further presumption of his guilt, and which will show the mischievous consequences of it; and I trust, your Lordships will not blame me for going a little into it. Your Lordships know we charge, that the appointment of such a woman as Munny Begum to the guardianship of the Nabob, to the superintendency of the civil justice of the country, and to the representation of the whole government, was made for no other purpose, than that through this corrupt woman 16,000*l.* a year, the whole tattered remains of the Nabob's grandeur,

deur, might be a prey to Mr. Hastings; it could be for no other. Now your Lordships would imagine, that after this, knowing he was already grievously suspected, he would have abstained from giving any further ground for suspicion by a repetition of the same acts through the same person; as no other reason could be furnished for such acts, done directly contrary to the order of his superiours, but that he was actuated by the influence of bribery. Your Lordships would imagine, that when this Munny Begum was removed upon a charge of corruption, Mr. Hastings would have left her quiet in tranquil obscurity, and that he would no longer have attempted to elevate her into a situation, which furnished against himself so much disgrace and obloquy to himself, and concerning which he stood charged with a direct and positive act of bribery. Your Lordships well know, that upon the deposition of that great magistrate, Mahomet Reza Khân, this woman was appointed to supply his place. The Governour General and Council (the majority of them being then Sir John Clavering, Colonel Monson and Mr. Francis) had made a provisional arrangement for the time, until they should be authorized to fill up the place in a proper manner. Soon after there came from Europe a letter expressing the satisfaction, which the Court of Directors had received

received in the acquittal of Mahomet Reza Khân, expressing a regard for his character, an high opinion of his abilities, and a great disposition to make him some recompence for his extreme suffering; and accordingly they ordered, that he should be again employed. Having no exact ideas of the state of employments in that country, they made a mistake in the specifick employment, for which they named him; for being a Mahommedan, and the head of the Mahommedans in that country, he was named to an office, which must be held by a Gentoo. But the majority, I have just named, who never endeavoured by any base and delusive means to fly from their duty, or not to execute it at all, because they were desired to execute it in a way, in which they could not execute it, followed the spirit of the order; and finding, that Mahomet Reza Khân, before his imprisonment and trial, had been in possession of another employment, they followed the spirit of the instructions of the Directors, and replaced him in that employment; by which means there was an end put to the government of Munny Begum; the country reverted to its natural state, and men of the first rank in the country were placed in the first situations in it. The seat of judicature was filled with wisdom, gravity and learning, and Munny Begum sunk into that situation

situation, into which a woman, who had been engaged in the practices, that she had been engaged in, naturally would sink at her time of life. Mr. Hastings resisted this appointment. He trifled with the Company's orders on account of the letter of them, and endeavoured to disobey the spirit of them. However the majority overbore him; they put Mahomet Reza Khân into his former situation, and as a proof and seal to the honour and virtue of their character, there was not a breath of suspicion, that they had any corrupt motive for this conduct. They were odious to many of the India House here; they were odious to that corrupt influence, which had begun and was going on to ruin India. But in the face of all this odium, they gave the appointment to Mahomet Reza Khân, because the act contained in itself its own justification. Mr. Hastings made a violent protest against it, and resisted it to the best of his power, always in favour of Munny Begum, as your Lordships will see. Mr. Hastings sent this protest to the Directors; but the Directors, as soon as the case came before them, acknowledged their errour, and praised the majority of the Council, Sir John Clavering, Colonel Monson, and Mr. Francis, for the wise and honourable part they had taken upon the occasion, by obeying the spirit and not the letter; commended the act

they had done; confirmed Mahomet Reza Khân in his place; and to prevent that great man from being any longer the sport of fortune, any longer the play of avarice, between corrupt governours and dancing girls, they gave him the pledged faith of the Company, that he should remain in that office as long as his conduct deserved their protection; it was a good and an honourable tenure.

My Lords, soon afterwards there happened two lamentable deaths, first of Colonel Monson, afterwards of General Clavering. Thus Mr. Hastings was set loose; there was an inspection and a watch upon his conduct, and no more. He was then just in the same situation, in which he had stood in 1772. What does he do? Even just what he did in 1772. He deposes Mahomet Reza Khân, notwithstanding the Company's orders; notwithstanding their pledged faith; he turns him out, and makes a distribution of two lacks and a half of rupees, the salary of that great magistrate, in the manner I will now show your Lordships. He made an arrangement consisting of three main parts; the first was with regard to the women, the next with regard to the magistracy, the last with regard to the officers of state of the household.

The first person, that occurred to Mr. Hastings, was Munny Begum, and he gave her, not out of

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that part of the Nabob's allowance, which was to support the seraglio, but out of the allowance of this very magistrate, just as if such a thing had been done here out of the salary of a Lord Chancellor or a Lord Chief Justice;—out of the two lacks and a half of rupees, that is, about twenty-four or twenty-five thousand pounds a year, he ordered an allowance to be made to Munny Begum of 72,000 rupees per annum, or 7,200*l.* a year;—for the Nabob's own mother, whom he thrust as usual into a subordinate situation, he made an allowance of 3,000*l.*;—to the Sudder-ul-Huk Khân, which is, translated into English, the Lord Chief Justice, he allowed the same sum, that he did to the dancing girl, (which was very liberal in him, and I am rather astonished to find it) namely, 7,200*l.* a year. And, who do you think was the next publick officer he appointed? It was the Rajah Goordass, the son of Nundcomar, and whose testimony he has attempted both before and since this occasion to weaken. To him, however, he gave an employment of 6,000*l.* a year, as if to make through the son some compensation to the manes of the father. And in this manner, he distributes with a wild and liberal profusion, between magistrates and dancing girls, the whole spoil of Mahomet Reza Khân, notwithstanding the Company's direct and positive assurance given

to him. Every thing was done at the same time, to put, as it was before, into the hands of this dancing girl, the miserable Nabob's whole family; and that the fund for corruption might be large enough, he did not take the money for this dancing girl out of the Nabob's separate revenue, of which he and the dancing girl had the private disposal between them. Now, upon what pretence did he do all this? The Nabob had represented to Mr. Hastings, that he was now of age; that he was an independent sovereign prince; that being independent and sovereign in his situation, and being of full age, he had a right to manage his own concerns himself; and, therefore, he desired to be admitted to that management: and indeed, my Lords, ostensibly, and supposing him to have been this independent prince, and that the Company had no authority, or had never exercised any authority over him through Mr. Hastings, there might be a good deal said in favour of this request. But what was the real state of the case? The Nabob was a puppet in the hands of Mr. Hastings and Munny Begum; and you will find upon producing the correspondence, that he confesses, that she was the ultimate object and end of this request.

I think, this correspondence, wherein a son is made to petition, in his own name, for the elevation

elevation of a dancing girl, his step-mother, above himself and every body else, will appear to your Lordships such a curiosity, as, I believe, is not to be found in the state correspondence of the whole world. The Nabob begins thus:—

"The excellency of that policy, by which her Highness the Begum (meaning Munny Begum,) (may her shadow be far extended) formerly during the time of her administration, transacted the affairs of the Nizamut in the very best and most advantageous manner, was, by means of the delusions of enemies, disguised under the appearance of friends, hidden from me. Having lately seriously reflected on my own affairs, I am convinced, that it was the effect of maternal affection, was highly proper and for my interest; and that except the said Begum is again invested with the administration, the regulation and prosperity of this family, which is in fact her own, cannot be effected. For this cause, from the time of her suspension until now, I have passed my time, and do so still, in great trouble and uneasiness. As all affairs, and particularly the happiness and prosperity of this family, depend on your pleasure, I now trouble you in hopes, that you likewise, concurring in this point, will be so kind as to write in fit and proper terms to her Highness the Begum, that she will always, as formerly,

employ her authority in the administration of the Nizamut and the affairs of this family."

This letter, my Lords, was received upon the 23d of August; and your Lordships may observe two things in it; first, that some way or other this Nabob had been (as the fact was) made to express his desire of being released from his subjection to the Munny Begum; but that now he had got new lights, all the mists are gone; and he now finds, that Munny Begum is not only the fittest person to govern him, but the whole country. This young man, whose incapacity is stated, and never denied by Mr. Hastings, and by Lord Cornwallis, and by all the rest of the world, who know him, begins to be charmed with the excellency of the policy of Munny Begum. Such is his violent impatience, such the impossibility of his existing an hour but under the government of Munny Begum, that he writes again on the 25th of August, (he had really the impatience of a lover) and within five days afterwards writes again, so impatient, so anxious and jealous is this young man to be put under the government of an old dancing woman. He is afraid lest Mr. Hastings should imagine, that some sinister influence had prevailed upon him in so natural and proper a request. He says, "Knowing it for my interest and advantage, that the administration of the affairs of the Nizamut

Nizámut should be restored to her Highness the Munny Begum, I have already troubled you with my request, that, regarding my situation with an eye of favour, you will approve of this measure. I am credibly informed, that some one of my enemies, from selfish views, has, for the purpose of oversetting this measure, written you, that the said Begum procured from me by artifice the letter I wrote you on this subject. This causes me the greatest astonishment. Please to consider, that artifice and delusion are confined to cheats and impostors, and can never proceed from a person of such exalted rank, who is the head and patron of all the family of the deceased Nabob, my father; and that to be deluded, being a proof of weakness and folly, can have no relation to me, except the inventor of this report considers me as void of understanding, and has represented me to the gentlemen as a blockhead and an ideot. God knows how harshly such expressions appear to me; but as the truth or falsehood has not yet been fully ascertained, I have therefore suspended my demand of satisfaction. Should it be true, be so kind as to inform me of it, that the person may be made to answer for it." My Lords, here is a very proper demand; the Nabob is astonished at the suspicion, that such a woman as Munny Begum, whose trade in youth had been delusion,

should be capable of deluding any body. Astonishing it certainly was, that a woman, who had been a deluder in youth, should be suspected to be the same in old age; and that he, a young man, should be subject to her artifices;—"they "must suspect me to be a great blockhead," he says, "if a man of my rank is to be deluded." There he forgot, that it is the unhappy privilege of great men to be cheated, to be deluded, much more than other persons: but he thought it so impossible, in the case of Munny Begum, that he says, "produce me the traitor, that "could suppose it possible for me to be deluded, "when I call for this woman as the governour "of the country. I demand satisfaction." I rather wonder, that Mr. Hastings did not inform him who it was, that had reported so gross and improbable a tale, and deliver him up to the fury of the Nabob.

Mr. Hastings is absolutely besieged by him; for he receives another letter upon the 8d of September. Here are four letters following one another quick as post expresses, with horns sounding before them. Oh, I die, I perish, I sink, if Munny Begum is not put into the government of the country. "I, therefore, desire "to have her put into the government of the "country; and that you will not keep me "longer in this painful suspense, but will be "kindly

" kindly pleased to write immediately to the " Munny Begum, that she take on herself the " administration of the affairs of the Nizamut, " which is, in fact, her own family, without " the interference of any other person what- " ever; by this you will give me complete sa- " tisfaction." Here is a correspondence more like an amorous than a state correspondence. What is this man so eager about, what in such a rage about, that he cannot endure the smallest delay of the post with common patience— why, lest this old woman (who is not his mother, and with whom he had no other tie of blood) should not be made mistress of himself and the whole country! However, in a very few months afterwards he himself is appointed by Mr. Hastings to the government; and you may easily judge by the preceding letters, who was to govern. It would be an affront to your Lordships' judgment to attempt to prove, who was to govern, after he had desired to put the whole government of affairs into the hands of Munny Begum. Now, Munny Begum having obtained this salary, and being invested with this authority, and made in effect the total and entire governour of the country, as I have proved by the Nabob's letters; let us see the consequences of it; and, then, I desire to know, whether your Lordships can believe, that in all this

haste,

haste, which, in fact, is Mr. Hastings's haste and impatience; (for we shall prove, that the Nabob never did or could take a step but by his immediate orders and directions;) whether your Lordships can believe, that Mr. Hastings would incur all the odium attending such transactions, unless he had some corrupt consideration.

My Lords, very soon after these appointments were made, consisting of Munny Begum at the head of the affairs, the Lord Chief Justice under her, and under her direction, and Rajah Goordass as steward of the household; the first thing we hear is, just what your Lordships expect to hear upon such a case, that this unfortunate Chief Justice, who was a man undoubtedly of but a poor, low, disposition, but I believe a perfectly honest, perfectly well intentioned man, found it absolutely impossible for him to execute his office under the direction of Munny Begum; and, accordingly, in the month of September following, he sends a complaint to Mr. Hastings—"That cer-"tain bad men had gained an ascendency over "the Nabob's temper, by whose instigation he "acts." After complaining of the slights he receives from the Nabob, he adds, "thus they "cause the Nabob to treat me, sometimes with "indignity, at others with kindness, just as "they think proper to advise him: their view "is, that by compelling me to displeasure at

"such

"such unworthy treatment, they may force me "either to relinquish my station, or to join with "them, and act by their advice, and appoint "creatures of their recommendation to the dif- "ferent offices, from which they might draw "profit to themselves." This is followed by another letter, in which he shows who those corrupt men were, that had gained the ascendency over the Nabob's temper—namely, the eunuchs of Munny Begum; one of them her direct instrument in bribery with Mr. Hastings. What you would expect from such a state of things accordingly happened. Every thing in the course of justice was confounded; all official responsibility destroyed; and nothing but a scene of forgery, peculation, and knavery of every kind and description prevailed through the country, and totally disturbed all order and justice in it. He says, "The Begum's minis- "ters before my arrival, with the advice of their "counsellors, caused the Nabob to sign a re- "ceipt, in consequence of which they received "at two different times near 50,000 rupees, in "the name of the officers of the Adawlut, Fouj- "darry, &c. from the Company's Circar; and "having drawn up an account current in the "manner they wished, they got the Nabob to "sign it, and then sent it to me." In the same letter

letter he asserts, "that these people have the "Nabob entirely in their power."

My Lords, you see here Mr. Hastings enabling the corrupt eunuchs of this wicked old woman to draw upon the Company's treasury at their pleasure, under forged papers of the Nabob, for just such monies as they please, under the name and pretence of giving it to the officers of justice, but which they distribute among themselves as they think fit. This complaint was soon followed by another, and they furnish, first, the strongest presumptive proof of the corrupt motives of Mr. Hastings; and secondly, they show the horrible mischievous effects of his conduct upon the country.

In consequence of the first complaint, Mr. Hastings directs this independent Nabob not to concern himself any longer with the Foujdarry. The Nabob, who had before declared, that the superintendance of all the offices belonged to him, and was to be executed by himself, or under his orders, instantly obeys Mr. Hastings, and declares, he will not interfere in the business of the Courts any more. Your Lordships will observe further, that the complaint is not against the Nabob, but against the creatures and the menial servants of Munny Begum, and yet it is the Nabob he forbids to interfere in this

this business; of the others he takes no notice; and this is a strong proof of the corrupt dealings of Mr. Hastings with this woman.—When the whole country was fallen into confusion under the administration of this woman, and under her corrupt ministers, men base born and employed in the basest offices (the men of the household train of the women of rank in that country are of that description) he writes to the Nabob again, and himself confesses the mischiefs, that had arisen from his corrupt arrangements.

"At your Excellency's request, I sent Sudder ul Huk Khân to take on him the administration of the affairs of the Adawlut and Phousdarry, and hoped by that means not only to have given satisfaction to your Excellency; but that through his abilities and experience these affairs would have been conducted in such manner as to have secured the peace of the country, and the happiness of the people; and it is with the greatest concern I learn, that this measure is so far from being attended with the expected advantages, that the affairs both of the Phousdarry and Adawlut are in the greatest confusion imaginable, and daily robberies and murders are perpetrated throughout the country. This is evidently owing to the want of a proper authority in the person appointed to superintend them. I therefore addressed your Excellency on the importance

and

and delicacy of the affairs in question, and of the necessity of lodging full power in the hands of the person chosen to administer them.' In reply to which your Excellency expressed sentiments coincident with mine. Notwithstanding which, your dependants and people, actuated by selfish and avaricious views, have by their interference so impeded the business, as to throw the whole country into a state of confusion, from which nothing can retrieve it but an unlimited power lodged in the hands of the superintendant. I therefore request, that your Excellency will give the strictest injunctions to all your dependants not to interfere in any manner with any matter relative to the affairs of the Adawlut and Phousdarry; and that you will yourself relinquish all interference therein, and leave them entirely to the management of Sudder ul Huk Khân. This is absolutely necessary to restore the country to a state of tranquillity."

My Lords, what evidence do we produce to your Lordships of the consequences of Mr. Hastings's corrupt measures?—his own. He here gives you the state, into which the country was thrown by the criminal interference of the wicked woman, whom he had established in power, totally superseding the regular judicial authority of the country, and throwing every

thing

thing into confusion.—As usual there is such irregularity in his conduct, and his crimes are so multiplied, that all the contrivances of ingenuity are unable to cover them: now and then he comes and betrays himself; and here he confesses you his own weakness, and the effects of his own corruption;—he had appointed Munny Begum to this office of power, he dare not say a word to her upon her abuse of it, but he lays the whole upon the Nabob. When the Chief Justice complains, that these crimes were the consequence of Munny Begum's interference, and were committed by her creatures: why did he not say to the Nabob, the Begum must not interfere; the Begum's eunuchs must not interfere? He dared not; because that woman had concealed all the bribes but one from publick notice to gratify him; she and Yatibar-Ali-Khân, her minister, who had the principal share in this destruction of justice, and perversion of all the principal functions of government, had it in their power to discover the whole. Mr. Hastings was obliged, in consequence of that concealment, to support her and to support him. Every evil principle was at work. He bought a mercenary silence to pay the same back to them. It was a wicked silence, the concealment of their common guilt. There was at once a corrupt gratitude operating mutually by a corrupt influence

influence on both; and a corrupt fear influencing the mind of Mr. Hastings, which did not permit him to put an end to this scene of disorder and confusion, bought at the expense of 24,000*l.* a year to the Company. You will hereafter see what use he makes of the evidence of Yatibar-Ali-Khân, and of this woman, for concealing their guilt.

Your Lordships will observe, that the virtuous majority, whose reign was but short, and two of whom died of grief and vexation under the impediments, which they met with from the corruptions and oppositions of Mr. Hastings (their indirect murderer; for it is well known to the world, that their hearts were thus broken) put their conduct out of all suspicion. For they ordered an exact account to be kept by Mahomet Reza Khân; though, certainly, if any person in the country could be trusted, he, upon his character, might; but they did not trust him, because they knew the Company did not suffer them to trust any man: they ordered an exact account to be kept by him of the Nabob's expenses, which finally must be the Company's expenses; they ordered the account to be sent down yearly to be controlled, if necessary, whilst the means of control existed. What was Mr. Hastings's conduct? He did not give the persons, whom he appointed, any order to produce

produce any account, though their character and circumstances were such as made an account ten thousand times more necessary from them than from those, from whom it had been in former times by the Company strictly exacted. So that his not ordering any account to be given of the money, that was to be expended, leaves no doubt, that the appointment of Munny Begum, was in pursuance of his old system of bribery, and that he maintained her in office to the subversion of public justice, for the purpose of robbing, and of continuing in the practice of robbing, the country.

But though this continued longer than was for the good of the country, yet it did not continue absolutely and relatively long; because the Court of Directors, as soon as they heard of this iniquitous appointment, which glared upon them in all the light of its infamy, immediately wrote the strongest, the most decided, and the most peremptory censure upon him, attributing his acts, every one of them, to the same causes, to which I attribute them. As a proof, that the Court of Directors saw the thing in the very light, in which I represent it to your Lordships, and indeed in which every one must see it, you will find, that they reprobate all his idle excuses; that they reprobate all the actors in the scene; that they consider every thing to have

been done, not by the Nabob, but by himself; that the object of the appointment of Munny Begum was *money*, and that the consequence of that appointment was the robbery of the Nabob's treasury. "We by no means approve your late "proceedings, on the application of the Nabob "Mobareck ul Dowlah, for the removal of the "Naib Subahdar. The requisition of Mobareck "ul Dowlah was improper and unfriendly; be- "cause he must have known, that the late ap- "pointment of Mahomet Reza Khân to the "office of Naib Subahdar had been marked "with the Company's special approbation; "and that the Court of Directors had assured "him of their favour, so long as a firm attach- "ment to the Company's interest, and a proper "discharge of the duties of his station, should "render him worthy of their protection. We "therefore repeat our declaration, that to re- "quire the dismission of a Prime Minister, thus "circumstanced, without producing the small- "est proof of his infidelity to the Company, or "venturing to charge him with one instance of "male-administration in the discharge of his "publick duty, was improper, and inconsistent "with the friendship subsisting between the "Nabob of Bengal and the Company." And further on, they say—"The Nabob having inti- "mated, that he had repeatedly stated the

trouble

" trouble and uneasiness, which he had suffered " from the naibship of the Nizamut being vest- " ed in Mahomet Reza Khân, we observe one " of the Members of your Board desired the " Nabob's repeated letters on the subject might " be read, but this reasonable request was over- " ruled, on a plea of saving the Board's time, " which we can by no means admit as a suffi- " cient objection. The Nabob's letters of the " 25th and 30th August, of the 3d September " and 17th November, leave us no doubt of the " true design of this extraordinary business " being to bring forward Munny Begum, and " again to invest her with improper power and " influence, notwithstanding our former decla- " ration, that so great a part of the Nabob's " allowance had been embezzled, or misapplied " under her superintendance."

At present, I do not think it necessary, because it would be doing more than enough; it would be slaying the slain, to show your Lordships what Mr. Hastings's motives were in acting against the sense of the East India Company, appointed by an Act of Parliament to control him: that he did it, for a corrupt purpose; that all his pretences were false and fraudulent, and that he had his own corrupt views in the whole of the proceeding. But in the statement, which I have given of this matter,

I beg your Lordships to observe the instruments, with which Mr. Hastings acts. The great men of that country, and particularly the Soubahdar himself, the Nabob, are, and is in so equivocal a situation, that it afforded him two bolting holes, by which he is enabled to resist the authority of the Company, and exercise an arbitrary authority of his own; for, though the Nabob has the titles of high sovereignty, he is the lowest of all dependants: he appears to be the master of the country: he is a pensioner of the Company's government.

When Mr. Hastings wants him to obey and answer his corrupt purposes, he finds him in the character of a pensioner: when he wants his authority to support him in opposition to the authority of the Company, immediately he invests him with high sovereign powers; and he dare not execute the orders of the Company for fear of doing some act, that will make him odious in the eyes of God and man. We see how he appointed all officers for him, and forebade his interference in all affairs. When the Company see the impropriety and the guilt of these acts, and order him to rescind them, and appoint again Mahomet Reza Khân, he declares he will not: that he cannot do it in justice, but that he will consent to send him the order of the Company,

pany, but without backing it with any order of the Board; which, supposing even there had been no private communication, was, in other words, commanding him to disobey it. So this poor man, who a short time before was at the feet of Mr. Hastings, whom Mr. Hastings declared to be a pageant, and swore in a court of justice, that he was but a pageant, and followed that affidavit with long declarations in Council, that he was a pageant in sovereignty, and ought in policy ever to be held out as such: this man he sets up in opposition to the Company, and refuses to appoint Mahomet Reza Khân to the office, which was guarantied to him by the express faith of the Company, pledged to his support. Will any man tell me, that this resistance, under such base, though plausible, pretences, could spring from any other cause, than a resolution of persisting systematically in his course of corruption and bribery, through Munny Begum?

But there is another circumstance, that puts this in a stronger light: he opposes the Nabob's mock authority to the authority of the Company; and leaves Mahomet Reza Khân unemployed, because, as he says, he cannot in justice execute orders from the Company (though they are his undoubted masters,) contrary to the rights of the Nabob. You see, what the rights of the

Nabob were: the rights of the Nabob were to be governed by Munny Begum, and her scandalous ministers. But, however, we now see him exalted to be an independent sovereign—he defies the Company at the head of their armies and their treasury—that name, that makes all India shake, was defied by one of its pensioners. My Lords, human greatness is an unstable thing. This man, so suddenly exalted, was as soon depressed; and the manner of his depression is as curious as that of his exaltation by Mr. Hastings; and will tend to show you the man most clearly.—Mr. Francis, whose conduct all along was directed by no other principles than those, which were in conformity with the plan adopted by himself and his virtuous colleagues; namely, an entire obedience to the laws of his country, and who constantly had opposed Mr. Hastings upon principles of honour, and principles of obedience to the authority of the Company, under which he acted, had never contended for any one thing, in any way, or in any instance, but obedience to them; and had constantly asserted, that Mahomet Reza Khân ought to be put into employment. Mr. Hastings as constantly opposed him; and the reason he gave for it was, that it was against the direct rights of the Nabob; and that they were rights so sacred, that they could not be infringed

even

even by the sovereign authority of the Company ordering him to do it. He had so great an aversion to the least subtraction of the Nabob's right, that though expressly commanded by the Court of Directors, he would not suffer Mahomet Reza Khân to be invested with his office under the Company's authority. The Nabob was too sovereign—too supreme for him to do it: but such is the fate of human grandeur, that a whimsical event reduced the Nabob to his state of pageant again, and made him the mere subject of—you will see whom. Mr. Hastings found he was so embarrassed by his disobedience to the spirit of the orders of the Company, and by the various wild projects he had formed, as to make it necessary for him, even though he had a majority in the Council, to gain over at any price Mr. Francis. Mr. Francis, frightened by the same miserable situation of affairs, (for this happened at a most dangerous period—the height of the Mahratta war,) was willing likewise to give up his opposition to Mr. Hastings, to suspend the execution of many rightful things, and to concede them to the public necessity. Accordingly, he agreed to terms with Mr. Hastings. But what was the price of that concession? Any base purpose, any desertion of public duty? No; all, that he desired of Mr. Hastings, was, that he should obey the orders of the Company;

and among other acts of the obedience required was this, that Mahomet Reza Khân should be put into his office.

You have heard, how Mr. Hastings opposed the order of the Company, and on what account he opposed it. On the first of September he sent an order to the Nabob, now become his subject, to give up this office to Mahomet Reza Khân; an act, which he had before represented as a dethroning of the Nabob. The order went on the first of September, and, on the third, this great and mighty prince, whom all earth could not move from the assertion of his rights, gives them all up; and Mahomet Reza Khân is invested with them. So there all his pretences were gone. It is plain, that what had been done before, was for Munny Begum; and that what he now gave up, was from necessity: and it shows, that the Nabob was the meanest of his servants; for in truth he ate his daily bread out of the hands of Mr. Hastings through Munny Begum.

Mahomet Reza Khân was now invested again with his office; but, such was the treachery of Mr. Hastings, that though he wrote to the Nabob, that this was done in consequence of the orders of the Company, he did clandestinely, according to his usual mode, assure the Nabob, that Mahomet Reza Khân should not hold

hold the place longer than till he heard from England. He then wrote him another letter, that he should hold it no longer than while he submitted to his present necessity; thus giving up to his colleague, what he refused to the Company; and engaged, privately, that he would dismiss Mahomet Reza Khân again. And, accordingly, the moment he thought Mr. Francis was not in a condition to give him trouble any longer, that moment he again turned out Mahomet Reza Khân from that general superintendance of affairs, which the Company gave him; and deposed him as a minister, leaving him only a very confined authority as a magistrate. All these changes, no less than four great revolutions, if I may so call them, were made by Mr. Hastings for his own corrupt purposes. This is the manner, in which Mr. Hastings has played with the most sacred objects, that man ever had a dealing with; with the government—with the justice—with the order—with the dignity—with the nobility of a great country: he played with them to satisfy his own wicked and corrupt purposes through the basest instrument.

Now, my Lords, I have done with these presumptions of corruption with Munny Begum; and have shown, that it is not a slight crime, but that it is attended with a breach of public faith;

faith; with a breach of his orders—with a breach of the whole English government, and the destruction of the Native government—of the police—the order—the safety—the security—and the justice of the country: and that all these are much concerned in this cause. Therefore the Commons stand before the face of the world, and say, we have brought a cause—a great cause—a cause worthy the Commons of England to prosecute, and worthy the Lords to judge and determine upon.

I have now nothing further to state, than what the consequences are of Mr. Hastings taking bribes; that Mr. Hastings's taking of bribes is not only his own corruption, but the incurable corruption of the whole service. I will show, first, that he was named in 1773, to put an end to that corruption. I will show, that he did not: that he, knowingly and willingly, connived at it; and that that connivance was the principal cause of all the disorders, that have hitherto prevailed in that country. I will show you, that he positively refused to obey the Company's order to inquire into, and to correct the corruptions, that prevailed in that country. Next, that he established an avowed system of connivance, in order to gain over every thing, that was corrupt in the country. And that, lastly, to secure it, he gave up all the prosecu-

tions;

tions; and enervated, and took away, the sole arm left to the Company for the assertion of authority, and the preservation of good morals and purity in their service.

My Lords, here is a letter in the year 1773, in which the Court of Directors had, upon his own representation, approved some part of his conduct; he is charmed with their approbation; he promises the greatest things: but I believe your Lordships will see from the manner, in which he proceeds at that very instant, that a more deliberate system, for not only being corrupt himself, but supporting corruption in others, never was exhibited in any publick paper.—"While I indulge the pleasure, which I receive from the past successes of my endeavours, I own I cannot refrain from looking back with a mixture of anxiety on the omissions, by which I am sensible I may since have hazarded the diminution of your esteem. All my letters, addressed to your Honourable Court, and to the Secret Committee, repeat the strongest promises of prosecuting the inquiries into the conduct of your servants, which you had been pleased to commit particularly to my charge. You will readily perceive, that I must have been sincere in those declarations, since it would have argued great indiscretion to have made them, had I foreseen my inability to perform them.

them. I find myself now under the disagreeable necessity of avowing that inability; at the same time I will boldly take upon me to affirm, that on whomsoever you might have delegated that charge, and by whatever powers it might have been accompanied, it would have been sufficient to occupy the entire attention of those, who were intrusted with it; and, even with all the aids of leisure and authority, would have proved ineffectual. I dare appeal to the publick records, to the testimony of those, who have opportunities of knowing me, and even to the detail, which the publick voice can report of the past acts of this government, that my time has been neither idly nor uselessly employed: yet such are the cares and embarrassments of this various state, that although much may be done, much more, even in matters of moment, must necessarily remain neglected. To select from the miscellaneous heap, which each day's exigencies present to our choice, those points, on which the general welfare of your affairs most essentially depends; to provide expedients for future advantages, and guard against probable evils, are all, that your administration can faithfully promise to perform for your service with their united labours most diligently exerted. They cannot look back without sacrificing the objects of their immediate duty,

which

which are those of your interests, to endless researches, which can produce no real good; and may expose your affairs to all the ruinous consequences of personal malevolence, both here and at home."

My Lords, this is the first man, I believe, that ever took credit for his sincerity from his breach of his promises—"I could not," he says, "have "made these promises, if I had not thought, "that I could perform them." Now, I find I cannot perform them, and you have in that non-performance, and in that profession, a security for my sincerity when I promised them. Upon this principle, any man, who makes a promise, has nothing to do afterwards, but to say, that he finds himself (without assigning any particular cause for it) unable to perform it; not only to justify himself for his non-performance, but to justify himself, and claim credit for sincerity in his original profession. The charge was given him specially, and he promised obedience, over and over, upon the spot, and in the country, in which he was no novice, for he had been bred in it: it was his native country in one sense, it was the place of his renewed nativity and regeneration. Yet, this very man, as if he was a novice in it, now says, "I promised "you what I now find I cannot perform." Nay, what is worse, he declares, no man could perform it,

it, if he gave up his whole time to it: and, lastly, he says, that the inquiry into these corruptions, even if you succeeded in it, would do more harm than good. Now, was there ever an instance of a man so basely deserting a duty, and giving so base a reason for it? His duty was to put an end to corruption in every channel of government.—It cannot be done. Why? because it would expose our affairs to malignity and enmity; and end, perhaps, to our disadvantage. Not only will he connive himself, but he advises the Company to do it. For fear of what? for fear, that their service was so abandoned and corrupt, that the display of the evil would tend more to their disreputation, than all their attempts to reform it would tend to their service.

Mr. Hastings should naturally have imagined, that the law was a resource in this desperate case of bribery: he tells you, that in "that charge "of oppression, though they were supported by "the cries of the people, and the most authentick "representations, it is yet impossible in most "cases to obtain legal proofs." Here is a system of total despair upon the business, which, I hope, and believe, is not a desperate one, and has not proved a desperate one, whenever a rational attempt has been made to pursue it. Here you find him corrupt, and you find in consequence of that corruption, that he screens the whole body

body of corruption in India, and states an absolute despair of any possibility, by any art or address, of putting an end to it. Nay, he tells you, that if corruption did not exist, if it was not connived at, that the India Company could not exist: whether that be a truth or not, I cannot tell; but this I know, that it is the most horrible picture, that ever was made of any country. It might be said, that there were excuses for omissions, sins of omission he calls them. I will show, that they were systematick, that Mr. Hastings did uniformly profess, that he would connive at abuses, and contend, that abuses ought to be connived at. When the whole mystery of the iniquity, in which he himself was deeply concerned, came to light; when it appeared, that all the Company's orders were contravened; that contracts were given directly contrary to their orders, and upon principles subversive of their Government, leading to all manner of oppression and ruin to the country; what was Mr. Hastings's answer? "I must "here remark, that the majority * * * * * * * "I had not the power of establishing it*." Then he goes on, and states other cases of corruption, at every one of which he winks. Here he states another reason for his connivance: "Suppose again," for he puts another supposition,

* *Document wanting.*

sition, and these suppositions are not hypotheses laid down for argument, but real facts then existing before the Council examining into grievances; "Suppose again, that any person had benefited himself * * * * * unprofitable discussion *."

Here is a direct avowal of his refusing to examine into the conduct of persons in the Council, even in the highest departments of Government, and the best paid, for fear he should dissatisfy them, and should lose their votes, by discovering those peculations and corruptions, though he perfectly knew them. Was there ever, since the world began, any man, who would dare to avow such sentiments, until driven to the wall? If he could show, that he himself abhorred bribes, and kept at a distance from them; then, he might say, I connive at the bribes of others; but when he acknowledges, that he takes bribes, how can you doubt, that he buys a corrupt confederacy, and puts an end to any hope through him of reformation of the abuses at Bengal? But your Lordships will see, that he not only connived at abuse, but patronised it, and supported it for his own political purposes, since he here confesses, that if inquiry into it created him ill humour, and produced him an opposition in Council, he sacrificed

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sacrificed it to the power of the Company, and the constitution of their Government.—Did he so? The Company ordered him to prosecute those people, and their constitution required, that they should be prosecuted. No, says Mr. Hastings, the conniving at it procures a majority of votes. The very thing, that he bought, was not worth half the price he paid for it. He was sent to reform corruptions, and in order, that he might reform corruptions, he winked at, countenanced and patronised them, to get a majority of votes; and what was, in fact, a sacrifice to his own interest, ambition and corruption, he calls a sacrifice to the Company. He puts then this alternative, either give every thing into my hand, suffer me to go on, and have no control, or else I wink at every species of corruption. It is a remarkable and stupendous thing, that when all the world was alarmed at the disorders of the Company; when that alarm occasioned his being sent out; and when in consequence of that alarm, Parliament suspended the constitution of the Company, and appointed another government, Mr. Hastings should tell that Company, that Parliament had done wrong, and that the person put at the head of that government was to wink at those abuses. —Nay, what is more, not only does Mr. Hastings declare upon general principles, that it was

impossible to pursue all the delinquencies of India; and that, if possible to pursue them, mischief would happen from it; but your Lordships will observe, that Mr. Hastings in this business, during the whole period of the administration of that body, which was sent out to inquire into, and reform the corruptions of India, did not call one person to an account; nor, except Mr. Hastings, this day, has any one been called to an account, or punished for delinquency. Whether he will be punished or no, time will show. I have no doubt of your Lordships' justice, and of the goodness of our cause.

The table of the House of Commons groaned under complaints of the evils growing in India under this systematic connivance of Mr. Hastings. The Directors had set on foot prosecutions, to be conducted God knows how; but such as they were, they were their only remedy; and they began to consider at last, that these prosecutions had taken a long oblivious nap of many years; and, at last, knowing, that they were likely in the year 1782 to be called to a strict account about their own conduct, the Court of Directors began to rouse themselves, and they write thus: "Having in several of "our letters to you very attentively perused "all the proceedings referred to in these pa- "ragraphs, relative to the various forgeries on

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" the Company's treasuries, we lament exceed-
" ingly, that the parties should have been so
" long in confinement without being brought
" to trial."

Here, my Lords, after justice had been asleep awhile, it revived. They directed two things; first, that those suits should be pursued; but whether pursued or not, that an account of the state of them should be given, that they might give orders concerning them.

Your Lordships see the orders of the Company. Did they not want to pursue and to revive those dormant prosecutions? They want to have a state of them, that they may know how to direct the future conduct of them with more effect and vigour than they had yet been pursued with. You will naturally imagine, that Mr. Hastings did not obey their orders, or obeyed them languidly: No, he took another part. He says, " Having attentively read and
" weighed the arguments * * * * * for
" withdrawing them *." Thus he begins with the general principle of connivance; he directly avows he does it for a political purpose; and when the Company directs, he shall proceed in the suits; instead of deferring to their judgment he takes the judgment on himself, and says, their's is untenable; he directly discharges

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the prosecutions of the Company; supersedes the authority of his masters, and gives a general release to all the persons, who were still suffering by the feeble footsteps of justice in that country. He gave them an act of indemnity, and that was the last of his acts.

Now when I show the consequence of his bribery, the presumptions, that arise from his own bribes, his attention to secure others from the punishment of their's; and, when ordered to carry on a suit, his discharging it: when we see all this, can we avoid judging and forming our opinions upon two grand points: first, that no man would proceed in that universal patronage of guilt, unless he was guilty himself: next, that by a universal connivance for fourteen years, he is himself the cause and main spring of all the evils, calamities, extortion, and bribery, that have prevailed and ravaged that country for so long a time? There is indeed no doubt either of his guilt, or of the consequences of it, by which he has extinguished the last expiring hope and glimpse, that remained, of procuring a remedy for India of the evils, that exist in it.

I would mention, that as a sort of postscript, when he could no longer put the government into the hands of that infamous woman, Munny Begum, he sent an amorous sentimental letter to the Company, describing her miserable situation,

tuation, and advising the Company to give her a pension of 72,000 rupees a year, to maintain her. He describes her situation in such a moving way, as must melt every heart. He supposes her to be reduced to want by the cruel orders of the Company, who retain from her money, which they were never obliged to give her. This representation, which he makes with as much fairness, as he represents himself to be in a state of the most miserable poverty and distress, he alone made to the Company, because his colleagues would not countenance him in it; and, we find, upon looking over Lord Cornwallis's last examination into the whole state of this unhappy family, that this woman was able to lend to Mobarick ul Doula twenty thousand pounds. Mr. Hastings, however, could not avoid making this representation; because he knew, that if he quitted the country without securing that woman by giving her a hope, that she could procure by his credit here that money, which by his authority he had before procured for her, she might then make a discovery of all the corruption, that had been carried on between them; and therefore he squanders away the treasures of the Company, in order to secure himself from any such detection, and to procure for himself Rozanammas, and all those fine things. He knew, that Munny Begum, that the whole se-

raglio, that all the country, whom he had put under the dominion of Sir John D'Oyley, that all those people might have made a discovery of all his corrupt proceedings; he therefore gets the Nabob to appoint Sir John D'Oyley his agent here, with a view of stopping his mouth, and by the hope of another 160,000*l.* a year to prevent his giving an account of the dilapidation and robbery, that was made of the 160,000*l.* which had been left him.

I have now finished what I proposed to say relative to his great fund of bribery, in the first instance of it, namely, the administration of justice in the country.

There is another system of bribery, which I shall state before my friends produce the evidence. He put up all the great offices of the country to sale; he makes use of the trust he had of the revenues in order to destroy the whole system of those revenues, and to bind them and make them subservient to his system of bribery; and this will make it necessary for your Lordships to couple the consideration of the charge of the revenues, in some instances, with that of bribery.

The next day your Lordships meet (when I hope I shall not detain you so long) I mean to open the second stage of his bribery, the period of discovery; for the first stage was the period

of

of concealment. When he found his bribes could no longer be concealed, he next took upon him to discover them himself, and to take merit from them.

When I shall have opened the second scene of his peculation, and his new principles of it, when you see him either treading in old corruptions, and excelling the examples he imitated, or exhibiting new ones of his own, in which of the two his conduct is the most iniquitous, and attended with most evil to the Company, I must leave your Lordships to judge.

TRIAL

OF

WARREN HASTINGS, ESQ.

TUESDAY, MAY 5th, 1789.

(MR. BURKE.)

MY LORDS,

AGREEABLY to your Lordships' proclamation, which I have just heard, and the duty enjoined me by the House of Commons, I come forward to make good their charge of high crimes and misdemeanors against Warren Hastings, Esquire, late Governour General of Bengal, and now a prisoner at your bar. My Lords, since I had last the honour of standing in this place before your Lordships, an event has happened, upon which it is difficult to speak, and impossible to be silent. My Lords, I have been disavowed by those, who sent me here to represent them. My Lords, I have been disavowed in a material part of that engagement, which I had pledged myself to this House to perform. My Lords, that disavowal has been followed by a censure; and yet, my Lords, so censured

censured and so disavowed, and by such an authority, I am sent here again, to this the place of my offence, under the same commission, by the same authority, to make good the same charge, against the same delinquent. My Lords, the situation is new and awful: the situation is such as, I believe, and I am sure, has nothing like it on the Records of Parliament, nor probably in the history of mankind. My Lords, it is not only new and singular, but, I believe, to many persons, who do not look into the true interiour nature of affairs, it may appear, that it would be to me as mortifying as it is unprecedented. But, my Lords, I have in this situation, and upon the consideration of all the circumstances, something more to feed my mind with, than mere consolation, because, my Lords, I look upon the whole of these circumstances, considered together, as the strongest, the most decisive and the least equivocal proof, which the Commons of Great Britain can give, of their sincerity, and their zeal in this prosecution. My Lords, is it from a mistaken tenderness, or a blind partiality to me, that, thus censured, they have sent me to this place? No, my Lords, it is because they feel, and recognise in their own breasts, that active principle of justice, that zeal for the relief of the people of India, that zeal for the honour of Great Britain, which characterizes

terizes me and my excellent associates; that, in spite of any defects in consequence of that zeal, which they applaud, and while they censure its mistakes, and, because they censure its mistakes, do but more applaud, they have sent me to this place instructed, but not dismayed, to pursue this prosecution against Warren Hastings, Esquire. Your Lordships will therefore be pleased to consider this, as I consider it, not as a thing honourable to me, in the first place, but as honourable to the Commons of Great Britain, in whose honour the national glory is deeply concerned; and I shall suffer myself with pleasure to be sacrificed perhaps in what is dearer to me than my life, my reputation, rather than let it be supposed, that the Commons should for one moment have faltered in their duty. I, my Lords, on the one hand, feeling myself supported and encouraged, feeling protection and countenance from this admonition and warning, which has been given to me, will show myself, on the other hand, not unworthy so great and distinguished a mark of the favour of the Commons, a mark of favour, not the consequence of flattery, but of opinion. I shall feel animated and encouraged by so noble a reward, as I shall always consider the confidence of the Commons to be; the only reward, but a rich reward, which I have received, for the toils and labours of a long life.

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The Commons then thus vindicated, and myself thus encouraged, I shall proceed to make good the charge, in which the honour of the Commons, that is the national honour, is so deeply concerned. For, my Lords, if any circumstance of weakness, if any feebleness of nerve, if any yielding to weak and popular opinions and delusions were to shake us, consider what the situation of this country would be. This prosecution, if weakly conceived, ill digested, or intemperately pursued, ought never to have been brought to your Lordships' bar: but being brought to your Lordships' bar, the nation is committed to it, and the least appearance of uncertainty in our minds would disgrace us for ever. *Esto perpetua* has been said. To the glory of this nation, much more be it said, *esto perpetua*; and I will say, that as we have raised and exhibited a theatre of justice, which has excited the admiration of all Europe, there would be a sort of lustre in our infamy, and a splendour in the disgrace, that we shall bring upon ourselves, if we should, just at that moment, turn that theatre of our glory into a spectacle of dishonour beyond what has ever happened to any country of the world.

The Commons of Great Britain, whilst willing to keep a strong and firm hand over all those, who represent them in any business, do, at the same

same time, encourage them in the prosecution of it, by allowing them a just discretion and latitude wherever their own orders have not marked a distinction. I shall therefore go on with the more cheerful confidence, not only for the reasons, that I have stated, but for another and material reason. I know, and am satisfied, that, in the nobleness of your judgment, you will always make a distinction between the person, that gives the order, and the organ, that is to execute it. The House of Commons know no such thing as indiscretion, imprudence, or impropriety: it is otherwise with their instruments. Your Lordships very well know, that if you hear any thing, that shall appear to you to be regular, apt to bring forward the charge, just, prudent, cogent, you are to give it to the Commons of Great Britain in Parliament assembled; if you should hear from me (and it must be from me alone, and not from any other member of the Committee) any thing, that is unworthy of that situation, that comes feeble, weak, indigested, or ill prepared, you are to attribute that to the instrument. Your Lordships' judgment would do this without my saying it; but whilst I claim it on the part of the Commons for their dignity, I claim for myself the necessary indulgence, that must be given to all weakness. Your Lordships, then, will impute it,

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where you would have imputed it without my desire. It is a distinction you would naturally have made, and the rather, because what is alleged by us at the bar is not the ground, upon which you are to give judgment. If not only I, but the whole body of managers, had made use of any such expressions as I made use of, even if the Commons of Great Britain in Parliament assembled, if the collective body of Parliament, if the voice of Europe, had used them; if we had spoken with the tongues of men and angels, you, in the seat of judicature, are not to regard what we say, but what we prove; you are to consider, whether the charge is well substantiated, and proof brought out, by legal inference and argument. You know, and I am sure the habits of judging, which your Lordships have acquired by sitting in judgment, must better inform you than any other men, that the duties of life, in order to be well performed, must be methodised, separated, arranged, and harmonized, in such a manner, that they shall not clash with one another: but each have a department, assigned and separated to itself. My Lords, in that manner it is, that we the prosecutors have nothing to do with the principles, which are to guide the judgment: that we have nothing to do with the defence of the prisoner. Your Lordships well know, that, when

when we come before you, you hear a party; that, when the accused come before you, you hear a party: that it is for you to doubt and wait till you come to the close, before you decide: that it is for us, the prosecutors, to have decided before we came here. To act as prosecutors, we ought to have no doubt, or hesitation, nothing trembling or quivering in our minds upon the occasion. We ought to be fully convinced of guilt, before we come to you. It is then our business to bring forward the proofs, to enforce them with all the clearness, illustration, example, that we can bring forward: that we are to show the circumstances, that can aggravate the guilt: that we are to go further, show the mischievous consequences and tendency of those crimes to society; and that we are, if able so to do, to arouse and awaken in the minds of all, that hear us, those generous and noble sympathies, which Providence has planted in the breasts of all men, to be the true guardians of the common rights of humanity. Your Lordships know, that this is the duty of the prosecutors, and that, therefore, we are not to consider the defence of the party, which is wisely and properly left to himself; but we are to press the accusation with all the energy, of which it is capable, and to come with minds perfectly convinced before an august and awful tribunal,

tribunal, which at once tries the accuser and the accused.

Having stated thus much with respect to the Commons, I am to read to your Lordships the resolution, which the Commons have come to upon this great occasion, and upon which I shall take the liberty to say a very few words.

My Lords, the Commons have resolved last night, and I did not see the resolution till this morning, "That no direction or authority was "given by this House to the Committee ap- "pointed to manage the impeachment against "Warren Hastings, Esq. to make any charge or "allegation against the said Warren Hastings, "respecting the condemnation or execution of "Nundcomar; and that the words spoken by "the Right Honourable Edmund Burke, one of "the said managers, videlicet, that *He* (mean- "ing Mr. Hastings) murdered that man (mean- "ing Nundcomar) by the hands of Sir Elijah "Impey, ought not to have been spoken."

My Lords, this is the resolution of the House of Commons. Your Lordships well know and remember my having used such or similar words, and the end and purpose, for which I used them. I owe a few words of explanation to the Commons of Great Britain, who attend in a Committee of the whole House to be the observers and spectators of my conduct. I owe

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it to your Lordships; I owe it to this great auditory; I owe it to the present times and to posterity, to make some apology for a proceeding, which has drawn upon me the disavowal of the House, which I represent. Your Lordships will remember, that this charge, which I have opened to your Lordships, is primarily a charge founded upon the evidence of the Rajah Nundcomar, and consequently, I thought myself obliged, I thought it a part of my duty, to support the credit of that person, who is the principal evidence to support the direct charge, that is brought before your Lordships. I knew, that Mr. Hastings, in his anticipated defence before the House of Commons, had attempted to shake the credit of that witness. I therefore thought myself justified in informing your Lordships, and in warning him, that, if he did attempt to shake the credit of an important witness against him by an allegation of his having been condemned and executed for a forgery, I would endeavour to support his credit by attacking that very prosecution, which brought on that condemnation, and that execution; and that I did consider it, and would lay grounds before your Lordships to prove it, to be a murder committed, instead of a justification set up, or that ought to be set up.

Now, my Lords, I am ordered by the Commons

mons no longer to persist in that declaration, and I, who know nothing in this place, and ought to know nothing in this place, but obedience to the Commons, do mean, when Mr. Hastings makes that objection, if he shall be advised to make it against the credit of Rajah Nundcomar, not thus to support that credit; and, therefore, that objection to the credit of the witness must go unrefuted by me. My Lords, I must admit, perhaps against my private judgment (but that is of no consideration for your Lordships, when opposed to the judgment of the House of Commons) or, at least, not contest, that a first minister of state, in a great kingdom, who had the benefit of the administration, and of the entire and absolute command of a revenue of fifteen hundred thousand pounds a year, had been guilty of a paltry forgery in Calcutta; that this man, who had been guilty of this paltry forgery, had waited for his sentence and his punishment, till a body of English judges, armed with an English statute, came to Calcutta; and that this happened at the very happy nick and moment, when he was accusing Mr. Hastings of the bribery, with which we now, in the name of the Commons, charge him; that it was owing to an entirely fortuitous concurrence of circumstances, in which Mr. Hastings had no share, or that it was

owing to something beyond this, something that is rather pious than fortuitous, namely, that, as Mr. Hastings tells you himself, "all persuasions "of men were impressed with a superstitious "belief, that a fortunate influence directed all "my actions to their destined ends." I, not being at that time infected with the superstition, and considering what I thought Mr. Hastings's guilt to be, and what I must prove it to be, as well as I can, did not believe, that Providence did watch over Mr. Hastings, so as, in the nick of time, like a god in a machine, to come down to save him in the moment of his imminent peril and distress: I did not think so, but I must not say so.

But, now to show, that it was not weakly, loosely, or idly, that I took up this business, or that I anticipated a defence, which it was not probable for Mr. Hastings to make (and I wish to speak to your Lordships in the first instance, but to the Commons in the next,) I will read part of Mr. Hastings's defence before the House of Commons; it is in evidence before your Lordships. He says: "My accuser," (meaning myself, then acting as a private Member of Parliament,) "charges me with the receipt of "large sums of money, corruptly taken before "the promulgation of the regulating Act of "1773, contrary to my covenants with the "Company,

" Company, and with the receipt of very large " sums taken since, in defiance of that law, " and contrary to my declared sense of its pro- " visions." And he ushers in this charge in the following pompous diction :—" That in March " 1775 the late Rajah Nundcomar, a native " Hindoo of the highest cast in his religion, " and of the highest rank in society by the " offices, which he had held under the Country " government, did lay before the Council an " account of various sums of money," &c. " It would naturally strike every person, ignorant of the character of Nundcomar, that an accusation made by a person of the highest cast in his religion, and of the highest rank by his offices, demanded particular notice, and acquired a considerable degree of credit, from a prevalent association of ideas, that a nice sense of honour is connected with an elevated rank of life: but when this honourable House is informed, that my accuser knew (though he suppressed the facts) that this person, of high rank, and high cast, had forfeited every pretension to honour, veracity, and credit; that these are facts recorded in the very proceedings, which my accuser partially quotes, proving this man to have been guilty of a most flagrant forgery of letters from Munny Begum and the Nabob Zetram ul Dowlah (independent of the forgery,

for which he suffered death) of the most deliberate treachery to the state, for which he was confined, by the orders of the Court of Directors, to the limits of the town of Calcutta, in order to prevent his dangerous intrigues; and of having violated every principle of common honesty in private life; I say, when this honourable House is acquainted it is from mutilated and garbled assertions, founded on the testimony of such an evidence, without the whole matter being fairly stated, I do hope and trust it will be sufficient for them to reject *now* these vague and unsupported charges, in like manner as they were before rejected by the Court of Directors, and His Majesty's ministers, when they were first made by General Clavering, Colonel Monson, and Mr. Francis."

"I must here interrupt the course of my defence to explain on what grounds I employed, or had any connexion with, a man of so flagitious a character as Nundcomar."

My Lords, I hope this was a good and reasonable ground for me to anticipate the defence, which Mr. Hastings would make in this House, namely, on the known, recognised, infamous character of Nundcomar with regard to certain proceedings there charged at large, with regard to one forgery, for which he suffered, and two other forgeries, with which Mr. Hastings charged him.

him. I, who found, that the Commons of Great Britain had received that very identical charge of Nundcomar, and given it to me, in trust, to make it good, did naturally, I hope excusably, (for that is the only ground, upon which I stand) endeavour to support that credit, upon which the House acted. I hope I did so, and I hope, that the goodness of that intention may excuse me, if I went a little too far on that occasion. I would have endeavoured to support that credit, which it was much Mr. Hastings's interest to shake, and which he had before attempted to shake.

Your Lordships will have the goodness to suppose me now making my apology, and by no manner of means intending to persist either in this, or in any thing, which the House of Commons shall desire me not to declare in their name. But the House of Commons has not denied me the liberty to make you this just apology; God forbid they should; for they would be guilty of great injustice, if they did. The House of Commons, whom I represent, will likewise excuse me, their representative, whilst I have been endeavouring to support their characters in the face of the world, and to make an apology, and only an humble apology, for my conduct, for having considered that act in the light, that I represented it; and which I

did merely from my private opinion, without any formal instruction from the House. For there is no doubt, that the House is perfectly right, inasmuch as the House did neither formally instruct me, nor at all forbid my making use of such an argument; and therefore I have given your Lordships the reason, why it was fit to make use of such argument, if it was right to make use of it. I am in the memory of your Lordships, that I did conceive it to be relevant, and it was by the poverty of the language I was led to express my private feelings under the name of a *murder*. For, if the language had furnished me, under the impression of those feelings, with a word sufficient to convey the complicated atrocity of that act, as I felt it in my mind, I would not have made use of the word *murder*. It was on account of the language furnishing me with no other I was obliged to use that word. Your Lordships do not imagine, I hope, that I used that word in any other than a moral and popular sense, or that I used it in the legal and technical sense of the word *murder*. Your Lordships know, that I could not bring before this bar any Commoner of Great Britain on a charge for murder. I am not so ignorant of the laws and constitution of my country. I expressed an act, which I conceived to be of an atrocious and evil nature, and

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partaking of some of the moral evil consequences of that crime. What led me into that errour? nine years meditation upon that subject.

My Lords, the prisoner at the bar in the year 1780 sent a petition to the House of Commons complaining of that very Chief Justice, Sir Elijah Impey. The House of Commons, who then had some trust in me, as they have some trust still, did order me, along with persons more wise and judicious than myself, several of whom stand near me, to make an inquiry into the state of the justice of that country. The consequence of that inquiry was, that we began to conceive a very bad opinion both of the complainant, and defendant, in that business: that we found the English justice to be, as we thought it, and reported it to the House, a grievance, instead of a redress, to the people of India.—I could bring before your Lordships, if I did not spare your patience, whole volumes of reports, whole bodies of evidence, which in the progress we have made, in the course of eight or nine years, brought to my mind such a conviction, as will never be torn from my heart but with my life: and I should have no heart, that was fit to lodge any honest sentiment, if I departed from my opinion upon that occasion. But, when I declare my own firm opinion upon it; when I declare the reasons, that led me to

it; when I mention the long meditation, that preceded my founding a judgment upon it, the strict inquiry, the many hours and days spent in consideration, collation, and comparison, I trust, that infirmity, which could be actuated by no malice to one party or the other, may be excused; I trust, that I shall meet with this indulgence, when your Lordships consider, that as far as you know me, as far as my publick services for many years account for me, I am a man of a slow, laborious, inquisitive temper; that I do seldom leave a pursuit without leaving marks, perhaps of my weakness, but leaving marks of that labour; and that, in consequence of that labour, I made that affirmation, and thought the nature of the cause obliged me to support and substantiate it. It is true, that those, who sent me here, have sagacity to decide upon the subject in a week; they can, in one week, discover the errours of my labours for nine years.

Now, that I have made this apology to you, I assure you, you shall never hear me either in my own name here, much less in the name of the Commons, urge one thing to you in support of the credit of Nundcomar grounded upon that judgment, until the House shall instruct and order me otherwise; because I know, that, when I can discover their sentiments, I ought

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to know nothing here, but what is in strict and literal obedience to them.'

My Lords, another thing might make me perhaps a little willing to be admitted to the proof of what I advanced, and that is, the very answer of Mr. Hastings to this charge, which the House of Commons, however, have adopted, and, therefore, in some degree purified. "To the ma- "licious part of this charge, which is the "condemnation of Nundcomar for a forgery, "I do declare, in the most solemn and unre- "served manner, that I had no concern, either "directly or indirectly, in the apprehending, "prosecuting, or executing of Nundcomar. "He suffered for a crime of forgery, which he "had committed in a private trust, that was "delegated to him, and for which he had been "prosecuted in the Dewannee courts of the "country, before the institution of the supreme "court of judicature. To adduce this circum- "stance, therefore, as a confirmation of what "was before suspicious from his general depra- "vity of character, is just as reasonable as to "assert, that the accusations of Empson and "Dudley were confirmed, because they suffered "death for their atrocious acts."

My Lords, this was Mr. Hastings's defence before the House of Commons, and it is now in evidence before your Lordships. In this defence,

defence, he supposes the charge, which was made originally before the Commons, and which the Commons voted (though afterwards, for the convenience of shortening it, the affair was brought before your Lordships in the way, in which it is,) he supposes, I say, the whole to proceed from a malicious intention; and I hope your Lordships will not think, and I hope the Commons, reconsidering this matter, will not think, that, when such an imputation of malice was made for the purpose of repelling this corroborating argument, which was used in the House of Commons to prove his guilt, I was wrong in attempting to support the House of Commons against his imputation of malice.

I must observe, where I am limited and where I am not. I am limited, strictly, fully, (and your Lordships and my country, who hear me, will judge how faithfully I shall adhere to that limitation) not to support the credit of Nundcomar by any allegation against Mr. Hastings respecting his condemnation or execution; but I am not at all limited from endeavouring to support his credit against Mr. Hastings's charges of other forgeries; and from showing you, what I hope to show you clearly in a few words, that Nundcomar cannot be presumed guilty of forgery with more probability, than Mr. Hastings is guilty of bringing forward a light and dangerous

gerous (for I use no other words than a light and dangerous) charge of forgery, when it serves his purpose. Mr. Hastings charges Nundcomar with two other forgeries. "These two forgeries," he says, "are facts recorded in the very proceedings, which my accuser partially quotes, proving this man to have been guilty of a most flagrant forgery of a letter from Munny Begum, and of a letter from the Nabob Zeteram ul Doulah," and, therefore, he infers malice in those, who impute any thing improper to him, knowing, that the proof stood so. Here he asserts, that there are records before the House of Commons, and on the Company's proceedings and consultations, proving Nundcomar to have been guilty of these two forgeries. Turn over the next page of his printed defence, and you find a very extraordinary thing. You would have imagined, that this forgery of a letter from Munny Begum, which, he says, is recognised and proved on the journals, was a forgery charged by Munny Begum herself, or by somebody on her part, or some person concerned in this business. There is no other charge of it whatever, but the charge of Warren Hastings himself. He wants you to discredit a man for forgery upon no evidence under heaven, but that of his own, who thinks proper, without any sort of authority, without

any

any sort of reference, without any sort of collateral evidence, to charge a man with that very direct forgery. "You are," he says, "well informed of the reasons, which first induced me to give any space of my confidence to Nundcomar, with whose character I was acquainted by an experience of many years. The means, which he took to acquire it, were peculiar to himself. He sent a messenger to me at Madras, on the first news of my appointment to this presidency, with pretended letters from Munny Begum and the Nabob Zeteram ul Dowlah, the brother of the Nabob Jaffier Ally-Cawn, filled with bitter invectives against Mahomet Reza Cawn, and of as warm recommendations, as I recollect, of Nundcomar. I have been since informed by the Begum, that the letter, which bore her seal, was a complete forgery; and that she was totally unacquainted with the use, which had been made of her name, till informed of it by Juggut Chund, Nundcomar's son-in-law, who was sent to her expressly to entreat her not to divulge it. Mr. Middleton, whom she consulted on this occasion, can attest the truth of this story."

Mr. Middleton is dead, my Lords. This is not the Mr. Middleton, whom your Lordships heard, and know well in this House, but a brother of that Mr. Middleton, who is since dead. Your Lordships

Lordships find, when we refer to the records of the Company for the proof of this forgery, that there is no other than the unsupported assertion of Mr. Hastings himself, that he was guilty of it. Now that was bad enough; but then hear the rest. Mr. Hastings has charged this unhappy man, whom we must not defend, with another forgery; he has charged him with a forgery of a letter from Zeteram ul Doulah to Mr. Hastings. Now, you would imagine, that he would have given his own authority at least for that assertion, which, he says, was proved. He goes on, and says, "I have not yet had the curiosity to in-" quire of the Nabob, Zeteram ul Dowlah, whe-" ther his letter was of the same stamp; but " I cannot doubt it."

Now here he begins in this very defence, which is before your Lordships, to charge a forgery, upon the credit of Munny Begum, without supporting it even by his own testimony; and another forgery, in the name of Zeteram ul Doulah, which, he said, he had not even the curiosity to inquire into, and yet desires you, at the same time, to believe it to be proved. Good God! in what condition do men of the first character and situation in that country stand, when we have here delivered to us, as a record of the Company, Mr. Hastings's own assertions, saying, that these forgeries were proved, though you have;

have, for the first, nothing but his own unsupported assertion, and, for the second, his declaration only, that he had not the curiosity to inquire into it. I am not forbidden by the Commons to state how and on what slight grounds Warren Hastings charges the natives of the country with forgery; neither am I forbidden to bring forward the accusation, which Mr. Hastings made against Nundcomar for a conspiracy, nor the event of it, nor any circumstance relative to it. I shall therefore proceed in the best manner I can. There was a period, among the revolutions of philosophy, when there was an opinion, that, if a man lost one limb, or organ, the strength of that, which was lost, retired into what was left. My Lords, if we are straitened in this, then our vigour will be redoubled in the rest; and we shall use it with double force. If the top and point of the sword is broken off, we shall take the hilt in our hand, and fight with whatever remains of the weapon against bribery, corruption, and peculation; and we shall use double diligence under any restraint, which the wisdom of the Commons may lay upon us, or your Lordships' wisdom may oblige us to submit to.

Having gone through this business, and shown in what manner I am restrained, where I am not to repel Mr. Hastings's defence, and where I am left at large to do it, I shall submit to the strict injunction

injunction with the utmost possible humility, and enjoy the liberty, which is left to me, with vigour, with propriety, and with discretion, I trust.

My Lords, when the circumstance happened, which has given occasion to the long parenthesis, by which my discourse has been interrupted, I remember I was begining to open to your Lordships the second period of Mr. Hastings's scheme and system of bribery. My Lords, his bribery is so extensive, and has had such a variety in it, that it must be distinguished not only with regard to its kind, but must be likewise distinguished according to the periods of bribery and the epochas of peculation committed by him. In the first of those periods we shall prove to your Lordships, I believe, without the aids, that we hoped for (your Lordships allowing, as I trust you will do, a good deal for our situation) we shall be able, I say, to prove, that Mr. Hastings took as a bribe, for appointing Munny Begum, three lack and an half of rupees; we shall prove the taking at the same time the Rajeshye bribes. Mr. Hastings, at that time, followed bribery in a natural manner: he took a bribe, he took it as large as he could; he concealed it as well as he could, and he got out of it by artifice, or boldness, by use of trick, or use of power, just as he was enabled: he acted like a wild natural man, void of instruction, discipline and art.

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The second period opened another system of bribery. About this time he began to think (from what communication your Lordships may guess) of other means, by which, when he could no longer conceal any bribe, that he had received, he not only might exempt himself from the charge and the punishment of guilt, but might convert it into a kind of merit, and instead of a breaker of laws, a violator of his trust, a receiver of scandalous bribes, a peculator of the first magnitude, might make himself to be considered as a great distinguishing eminent financier, a collector of revenue in new and extraordinary ways: and that we should thus at once praise his diligence, industry, and ingenuity. The scheme he set on foot was this: he pretended, that the Company could not exist upon principles of strict justice, (for so he expresses it,) and that their affairs, in many cases, could not be so well accommodated by a regular revenue, as by privately taking money, which was to be applied to their service by the person, who took it, at his discretion. This was the principle he laid down. It would hardly be believed, I imagine, unless strong proof appeared, that any man could be so daring as to hold up such a resource to a regular government, which had three million of known, avowed, a great part of it territorial, revenue. But it is necessary, it seems, to piece out the lion's

lion's skin with a fox's tail; to tack on a little piece of bribery and a little piece of peculation, in order to help out the resources of a great and flourishing state; that they should have in the knavery of their servants, in the breach of their laws, and in the entire defiance of their covenants, a real resource applicable to their necessities; of which they were not to judge, but the persons, who were to take the bribes; and that the bribes thus taken were by a mental reservation, a private intention in the mind of the taker, unknown to the giver, to be some time or other, in some way or other, applied to the publick service. The taking such bribes was to become a justifiable act, in consequence of that reservation in the mind of the person, who took them, and he was not to be called to account for them, in any other way than as he thought fit.

My Lords, an Act of Parliament passed in the year 1773, the whole drift of which, I may say, was to prevent bribery, peculation, and extortion in the Company's servants; and the Act was penned, I think, with as much strictness and rigour as ever Act was penned. The twenty-fourth clause of chap. 63, 13 Geo. III, has the following enactment: "And be it further enacted by the authority aforesaid, that from and after the 1st day of August 1774, no person holding or exercising any civil or military

" office under the Crown, or the said United " Company in the East Indies, shall accept, " receive, or take, directly or indirectly, by " himself, or any other person or persons on his " behalf, or for his use or benefit, of and from " any of the Indian princes or powers, or their " ministers or agents, (or any of the natives of " Asia) any present, gift, donation, gratuity, or " reward, pecuniary or otherwise, upon any " account, or on any pretence whatsoever; or " any promise or engagement for any present, " gift, donation, gratuity, or reward; and if " any person, holding or exercising any such " civil or military office, shall be guilty of any " such offence, and shall be thereof legally con- " victed," &c. &c.

It then imposes the penalties, and your Lordships see, that human wisdom cannot pen an Act more strongly directed against taking bribes upon any pretence whatever. This Act of Parliament was in affirmance of the covenant entered into by the servants of the Company, and of the explicit orders of the Company, which forbid any person whatever in trust—" directly or indi- " rectly, to accept, take or receive, or agree to " accept, take or receive, any gift, reward, gra- " tuity, allowance, donation or compensation, in " money, effects, jewels, or *otherwise howsoever*, " from any of the Indian princes, sovereigns,

" subahs,

" subahs, or nabobs, or any of their ministers, " servants or agents, exceeding the value of " 4,000 rupees, &c. &c.

" And that he, the said Warren Hastings, shall " and will convey, assign, and make over, to the " said United Company for their sole and proper " use and benefit, all and every such gifts, re- " wards, gratuities, allowances, donations, or " compensations whatsoever, which contrary to " the true intent and meaning of these presents " shall come into the hands, possession or power " of the said Warren Hastings, or any other " person or persons in trust for him or for his " use."

The nature of the covenant, the Act of Parliament, and the Company's orders are clear. First, they have not forbidden their Governour General, nor any of their Governours, to take and accept from the princes of the country, openly and publickly, for their use, any territories, lands, sums of money, or other donations, which may be offered in consequence of treaty or otherwise. It was necessary to distinguish this from every other species of acceptance, because many occasions occurred, in which fines were paid to the Company in consequence of treaties; and it was necessary to authorize the receipt of the same in the Company's treasury, as an open and known proceeding. It was

never dreamed, that this should justify the taking of bribes, privately and clandestinely, by the Governour, or any other servant of the Company, for the purpose of its future application to the Company's use. It is declared, that all such bribes and money received should be the property of the Company. And why? As a means of recovering them out of the corrupt hands, that had taken them; and therefore this was not a license for bribery, but a prohibitory and penal clause, providing the means of coercion, and making the prohibition stronger. Now Mr. Hastings has found out, that this very coercive clause, which was made in order to enable his superiours to get at him and punish him for bribery, is a license for him to receive bribes. He is not only a practitioner of bribery, but a professor, a doctor upon the subject. His opinion is, that he might take presents or bribes to himself; he considers the penal clause, which the Company attached to their prohibition, and by which all such bribes are constructively declared to be theirs, in order to recover them out of his hands, as a license to receive bribes, to extort money, and he goes with the very prohibition in his hand, the very means, by which he was to be restrained, to exercise an unlimited bribery, peculation, and extortion, over the unhappy natives of the country.

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The moment he finds, that the Company has got a scent of any one of his bribes, he comes forward and says, to be sure, I took it as a bribe: I admit the party gave me it as a bribe: I concealed it for a time, because I thought it was for the interest of the Company to conceal it: but I had a secret intention, in my own mind, of applying it to their service: you shall have it; but you shall have it as I please, and when I please; and this bribe becomes sanctified the moment I think fit to apply it to your service. Now, can it be supposed, that the India Company, or that the Act of Parliament meant, by declaring, that the property taken by a corrupt servant, contrary to the true intent of his covenant, was theirs, to give a license to take such property; and that one mode of obtaining a revenue was by the breach of the very covenants, which were meant to prevent extortion, peculation, and corruption? What sort of body is the India Company, which, coming to the verge of bankruptcy by the robbery of half the world, is, afterwards, to subsist upon the alms of peculation and bribery, to have its strength recruited by the violation of the covenants imposed upon its own servants? It is an odd sort of body to be so fed and so supported. This new constitution of revenue, that he has made, is indeed a very singular contrivance. It is a revenue

to be collected by any officer of the Company, (for they are all alike forbidden, and all alike permitted,) to be collected by any person, from any person, at any time, in any proportion, by any means, and in any way he pleases; and to be accounted for, or not to be accounted for, at the pleasure of the collector; and, if applied to their use, to be applied at his discretion, and not at the discretion of his employers. I will venture to say, that such a system of revenue never was before thought of. The next part is an exchequer, which he has formed, corresponding with it. You will find the Board of Exchequer made up of officers ostensibly in the Company's service, of their publick accountant and publick treasurer, whom Mr. Hastings uses as an accountant and treasurer of bribes, accountable not to the Company, but to himself, acting in no publick manner, and never acting but upon his requisition, concealing all his frauds and artifices to prevent detection and discovery. In short, it is an exchequer, in which, if I may be permitted to repeat the words I made use of on a former occasion, extortion is the assessor, in which fraud is the treasurer, confusion the accountant, oblivion the remembrancer. That these are not mere words, I will exemplify as I go through the detail: I will show you, that every one of the things I have stated are truths, in fact, and

that

that these men are bound by the condition of their recognised fidelity to Mr. Hastings to keep back his secrets, to change the accounts, to alter the items, to make him debtor or creditor at pleasure; and, by that means, to throw the whole system of the Company's accounts into confusion.

I have shown the impossibility of the Company's having intended to authorize such a revenue, much less such a constitution of it as Mr. Hastings has drawn from the very prohibitions of bribery, and such an exchequer as he has formed upon the principles I have stated. You will not dishonour the Legislature, or the Company, be it what it may, by thinking, that either of them could give any sanction to it. Indeed you will not think, that such a device could ever enter into the head of any rational man. You are then to judge, whether it is not a device to cover guilt, to prevent detection by destroying the means of it; and at the same time, your Lordships will judge, whether the evidence we bring you to prove, that revenue is a mere pretext, be not stronger than the strange absurd reasons, which he has produced for forming this new plan of an exchequer of bribery.

My Lords, I am now going to read to you a letter, in which Mr. Hastings declares his opinion upon the operation of the Act, which

he now has found the means, as he thinks, of evading. My Lords, I will tell you, to save you a good deal of reading, that there was certain prize money given by Sujah ul Doulah to a body of the Company's troops, serving in the field; that this prize money was to be distributed among them; but upon application being made to Mr. Hastings for his opinion and sanction in the distribution, Mr. Hastings, at first, seemed inclined to give way to it, but, afterwards, upon reading and considering the Act of Parliament, before he allowed the soldiery to receive this publick donation, he thus describes his opinion of the operation of the Act.

Extract of a letter from Mr. Hastings to Colonel Champion, 31 August 1774.—" Upon a reference to the new Act of Parliament, I was much disappointed, and sorry to find, that our intentions were entirely defeated by a clause in the Act (to be in force after the 1st of August 1774) which divests us of the power to grant, and expressly prohibits the army to receive, the Nabob's intended donation. Agreeable to the positive sense of this clause, notwithstanding it is expressed individually, there is not a doubt but the army is included with all other persons in the prohibition from receiving presents or donations; a confirmation of which is, that in the clause of exceptions, wherein ' Counsellors

' at

'at Law, Physicians, Surgeons, and Chaplains, 'are permitted to receive the fees annexed to 'their profession,' no mention whatever is made of any latitude given to the army, or any circumstances wherein it would be allowable for them to receive presents. . . . . This unlucky discovery of an exclusion by Act of Parliament, which admits of no abatement or evasion whereever its authority extends, renders a revisal of our proceedings necessary, and leaves no option to our decision; it is not like the ordinances of the Court of Directors, where a favourable construction may be put, and some room is left for the interposition of the authority vested in ourselves; but positive and decisive, admitting neither of refinement, nor misconstruction. I should be happy, if, in this instance, a method could be devised of setting the Act aside, which I should most willingly embrace: but, in my opinion, an opposition would be to incur the penalty."

Your Lordships see, Mr. Hastings considered this Act to be a most unlucky discovery: indeed, as long as it remained in force, it would have been unlucky for him, because it would have destroyed one of the principal sources of his illegal profits. Why does he consider it unlucky? Because it admits of no reservation, no exception, no refinement whatever, but is clear, positive,

positive, decisive. Now, in what case was it, that Mr. Hastings made this determination? In the case of a donation, publickly offered to an army serving in the field by a prince, then independent of the Company. If ever there was a circumstance, in which any refinement, any favourable construction of the Act could be used, it was in favour of a body of men, serving in the field, fighting for their country, spilling their blood for it, suffering all the inconveniences of that climate. It was undoubtedly voluntarily offered to them by the party, in the height of victory, and enriched by the plunder of whole provinces. I believe your Lordships will agree with me, that if any relaxation, any evasion of an Act of Parliament, could be allowed, if the intention of the legislature could for a moment be trifled with, or supposed for a moment doubtful, it was in this instance; and yet, upon the rigour of the Act, Mr. Hastings refuses that army the price of their blood, money won solely, almost, by their arms, for a prince, who had acquired millions by their bravery, fidelity, and sufferings. This was the case, in which Mr. Hastings refused a publick donation to the army, and from that day to this they have never received it.

If the receipt of this publick donation could be thus forbidden, whence has Mr. Hastings since

since learned, that he may privately take money, and take it not only from princes, and persons in power, and abounding in wealth, but, as we shall prove, from persons in a comparative degree of penury and distress? That he could take it from persons in office and trust, whose power gave them the means of ruining the people for the purpose of enabling themselves to pay it? Consider in what a situation the Company must be, if the Governour General can form such a secret exchequer of direct bribes, given *eo nomine* as bribes, and accepted as such, by the parties concerned in the transaction, to be discovered only by himself, and with only the inward reservation, that I have spoken of.

In the first place, if Mr. Hastings should die, without having made a discovery of all his bribes, or if any other servant of the Company should imitate his example, without his heroick good intentions, in doing such villanous acts; how is the Company to recover the bribe money? The receivers need not divulge it, till they think fit, and the moment an informer comes, that informer is ruined. He comes, for instance, to the Governour General and Council, and charges, say not Mr. Hastings, but the head of the Board of Revenue, with receiving a bribe. Receive a bribe! So I did; but it was with an intention

intention of applying it to the Company's service. There I nick the informer: I am beforehand with him: the bribe is sanctified by my inward jesuitical intention. I will make a merit of it with the Company. I have received 40,000*l.* as a bribe; there it is for you; I am acquitted; I am a meritorious servant; let the informer go, and seek his remedy as he can. Now if an informer is once instructed, that a person, who receives bribes, can turn them into merit, and take away his action from him, do you think, that you ever will, or can, discover any one bribe? But what is still worse, by this method disclose but one bribe, and you secure all the rest, that you possibly can receive upon any occasion. For instance, strong report prevails, that a bribe of 40,000*l.* has been given, and the receiver expects that information will be laid against him. He acknowledges that he has received a bribe of 40,000*l.* but says, that it was for the service of the Company, and that it is carried to their account. And thus by stating, that he has taken some money, which he has accounted for, but concealing from whom that money came, which is exactly Mr. Hastings's case, if at last an information should be laid before the Company of a specific bribe having been received of 40,000*l.* it is said, by the receiver, Lord! this is the 40,000*l.* I told

you

you of: it is broken into fragments, paid by instalments; and you have taken it and put it into your own coffers.

Again, suppose him to take it through the hand of an agent, such as Gunga Govin Sing; and that this agent, who, as we have lately discovered, out of a bribe of 40,000*l.* which Mr. Hastings was to have received, kept back half of it, falls into their debt like him; I desire to know, what the Company can do in such a case? Gunga Govin Sing has entered into no covenants with the Company. There is no trace of his having this money, except what Mr. Hastings chuses to tell. If he is called upon to refund it to the Company, he may say he never received it; that he was never ordered to extort this money from the people; or if he was under any covenant not to take money, he may set up this defence, I am forbidden to receive money; and I will not make a declaration, which will subject me to penalties: or he may say in India before the supreme court, I have paid the bribe all to Mr. Hastings: and, then, there must be a bill and suit there, a bill and suit here, and by that means, having one party on one side the water, and the other party on the other, the Company may never come to a discovery of it. And that in fact this is the way in which one of his

his great bribe agents has acted, I shall prove to your Lordships by evidence.

Mr. Hastings had squeezed out of a miserable country a bribe of 40,000*l.* of which he was enabled to bring to the account of the Company only 20,000*l.* and of which we should not even have known the existence, if the inquiries, pursued with great diligence by the House of Commons, had not extorted the discovery; and even now that we know the fact, we can never get at the money; the Company can never receive it; and before the House had squeezed out of him, that some such money had been received, he never once told the Court of Directors, that his black bribe agent, whom he recommended to their service, had cheated both them and him of 20,000*l.* out of the fund of the bribe revenue. If it be asked, where is the record of this? Record there is none. In what office is it entered? It is entered in no office; it is mentioned as privately received for the Company's benefit; and you shall now further see what a charming office of receipt and account this new exchequer of Mr. Hastings's is.

For, there is another and a more serious circumstance, attending this business. Every one knows, that by the law of this, and, I believe, of every country, any money, which is taken illegally

gally from any person, as every bribe or sum of money extorted or paid without consideration is, belongs to the person, who paid it, and he may bring his action for it, and recover it. Then, see how the Company stands: the Company receives a bribe of 40,000 *l.* by Mr. Hastings; it is carried to its account; it turns bribery into a revenue; it sanctifies it. In the mean time, the man, from whom this money is illegally taken, sues Mr. Hastings. Must not he recover of Mr. Hastings? Then, if so, must not Mr. Hastings recover it again from the Company? The Company undoubtedly is answerable for it. And here is a revenue, which every man, who has paid it, may drag out of the treasury again. Mr. Hastings's donations of his bribes to the treasury are liable to be torn from it at pleasure by every man, who gives the money. First it may be torn from him, who receives it, and then he may recover it from the treasury, to which he has given it.

But admitting, that the taking of bribes can be sanctified by their becoming the property of the Company, it may still be asked, for what end and purpose has the Company covenanted with Mr. Hastings, that money, taken extorsively, shall belong to the Company? Is it, that satisfaction and reparation may be awarded against the said Warren Hastings, to the said Company,

Company, for their own benefit? No, it is for the benefit of the injured persons; and it is to be carried to the Company's account, "but in "trust, nevertheless, and to the intent, that the "said Company may and do render and pay "over the monies received or recovered by "them to the parties injured or defrauded, "which the said Company accordingly hereby "agree and covenant to do." Now here is a revenue to be received by Mr. Hastings for the Company's use, applied, at his discretion, to that use, and which the Company has previously covenanted to restore to the persons, that are injured and damaged. This is revenue, which is to be torn away by the action of any person; a revenue, which they must return back to the person complaining, as they in justice ought to do; for no nation ever avowed making a revenue out of bribery and peculation. They are, then, to restore it back again. But how can they restore it? Mr. Hastings has applied it: he has given it in presents to princes, laid it out in budgerows, in pen, ink, and wax; in salaries to secretaries; he has laid it out just in any way he pleased; and the India Company, who have covenanted to restore all this money to the persons, from whom it came, are deprived of all means of performing so just a duty. Therefore, I dismiss the idea, that any man

so acting could have had a good intention in his mind: the supposition is too weak, senseless, and absurd. It was only in a desperate cause, that he made a desperate attempt; for we shall prove, that he never made a disclosure without thinking, that a discovery had been previously made, or was likely to be made, together with an exposure of all the circumstances of his wicked and abominable concealment.

You will see the history of this new scheme of bribery, by which Mr. Hastings contrived, by avowing some bribes, to cover others, attempted to outface his delinquency, and, if possible, to reconcile a weak breach of the laws with a sort of spirited observance of them, and to become infamous for the good of his country.

The first appearance of this practice of bribery was in a letter of the 29th of November 1780. The cause, which led to the discovery, was a dispute between him and Mr. Francis at the Board, in consequence of a very handsome offer made by Mr. Hastings to the Board relative to a measure proposed by him, to which he found one objection to be the money, that it would cost. He made the most generous and handsome offer, as it stands upon record, that perhaps any man ever made, namely, that he would defray the expense out of his own private cash, and that he had deposited with the treasurer

two lack of rupees. This was in June 1780, and Mr. Francis soon after returned to Europe. I need not inform your Lordships, that Mr. Hastings had, before this time, been charged with bribery and peculation by General Clavering, Colonel Monson, and Mr. Francis. He suspected, that Mr. Francis, then going to Europe, would confirm this charge by the suspicious nature and circumstances of this generous offer; and this suspicion was increased by the connexion, which he supposed, and which we can prove he thought, Mr. Francis had with Cheit Sing. Apprehending therefore, that he might discover and bring the bribe to light some way or other, he resolved to anticipate any such discovery by declaring, upon the 29th of November, that this money was not his own. I will mention to your Lordships hereafter the circumstances of this money. He says, "My "present reason for adverting to my conduct," that is, his offer of two lack of rupees out of his own private cash for the Company's service, upon the 26th of June 1780, "on the occasion "I have mentioned, is to obviate the false con- "clusions or proposed misrepresentations, which "may be made of it, either as an artifice of "ostentation, or as the effect of corrupt in- "fluence, by assuring you, that the money, by "whatever means it came into your possession,

"was

" was not my own; that I had myself no right
" to it, nor would or could have received it,
" but for the occasion, which prompted me to
" avail myself of the accidental means, which
" were at that instant afforded me, of accept-
" ing and converting it to the property and use
" of the Company: and with this brief apology
" I shall dismiss the subject."

My Lords, you see what an account Mr. Hastings has given of some obscure transaction, by which he contradicts the Record; for, on the 26th of June, he generously, nobly, full of enthusiasm for their service, offers to the Company money of his own. On the 29th of November, he tells the Court of Directors, that the money he offered on the former day was not his own; that his assertion was totally false, that the money was not his; that he had no right to receive it; and that he would not have received it, but for the occasion, which prompted him to avail himself of the accidental means, which at that instant offered.

Such is the account sent by their Governour in India, acting as an accountant to the Company—a Company with whom every thing is matter of account. He tells them, indeed, that the sum he had offered was not his own; that he had no right to it; and that he would not have taken it, if he had not been greatly

tempted by the occasion; but he never tells them by what means he came at it, the person, from whom he received it, the occasion, upon which he received it (whether justifiable or not,) or any one circumstance under heaven relative to it. This is a very extraordinary account to give to the publick of a sum, which we find to be somewhere above twenty thousand pounds, taken by Mr. Hastings in some way or other. He set the Company blindly groping in the dark by the very pretended light, the ignis fatuus, which he held out to them: for at that time, all was in the dark, and in a cloud; and this is what Mr. Hastings calls *information* communicated to the Company on the subject of these bribes.

You have heard of obscurity illustrated by a further obscurity: *obscurum per obscurius.* He continues to tell them, "Something of affinity to "this anecdote may appear in the first aspect "of another transaction, which I shall proceed "to relate, and of which it is more imme-"diately my duty to inform you." He then tells them, that he had contrived to give a sum of money to the Rajah of Berar, and the account he gives of that proceeding is this: "We "had neither money to spare, nor, in the ap-"parent state of that government in its rela-"tion to ours, would it have been either prudent "or consistent with our publick credit to have

"afforded

" afforded it. It was, nevertheless, my decided
" opinion, that some aid should be given, not
" less as a necessary relief than as an indication
" of confidence, and a return for the many
" instances of substantial kindnesses, which
" we had, within the course of the two last
" years, experienced from the government of
" Berar. I had an assurance, that such a pro-
" posal would receive the acquiescence of the
" Board; but I knew, that it would not pass
" without opposition, and it would have be-
" come publick, which might have defeated its
" purpose. Convinced of the necessity of the
" expedient, and assured of the sincerity of the
" government of Berar from evidences of
" stronger proof to me than I could make them
" appear to the other members of the Board,
" I resolved to adopt it, and take the entire
" responsibility of it upon myself. In this
" mode a less considerable sum would suffice.
" I accordingly caused three lack of rupees to
" be delivered to the minister of the Rajah of
" Berar, resident in Calcutta. He has trans-
" mitted it to Cultac. Two-thirds of this sum
" I have raised by my own credit, and shall
" charge it in my official accounts. The other
" third I have supplied from the cash in my
" hands belonging to the Honourable Com-
" pany."

Your Lordships see in this business another mode, which he has, of accounting with the Company, and informing them of his bribe. He begins his account of this transaction by saying, that it has something of affinity to the last anecdote, meaning the account of the first bribe. An anecdote is made a head of an account, and this, I believe, is what none of your Lordships ever have heard of before, and I believe it is yet to be learned in this commercial nation, a nation of accurate commerical account. The account he gives of the first is an anecdote; and what is his account of the second? A relation of an anecdote: not a near relation, but something of affinity; a remote relation cousin three or four times removed, of the half blood, or something of that kind, to this anecdote; and he never tells them any circumstance of it whatever of any kind, but that it has some affinity to the former anecdote. But, my Lords, the thing, which comes to some degree of clearness is this, that he did give money to the Rajah of Berar, and your Lodships wil be so good as to advert carefully to the proportions, in which he gave it. He did give him two lack of rupees of money raised by his own credit, his own money; and the third he advanced out of the Company's money in his hands. He might have taken the Company's money undoubtedly, fairly, openly,

and

and held it in his hands for a hundred purposes, and therefore he does not tell them, that even that third was money he had obtained by bribery and corruption. No; he says, it is money of the Company's, which he had in his hand; so that you must get through a long train of construction, before you ascertain, that this sum was what it turns out to be, a bribe, which he retained for the Company. Your Lordships will please to observe, as I proceed, the nature of this pretended generosity in Mr. Hastings. He is always generous in the same way. As he offered the whole of his first bribe as his own money, and afterwards acknowledged, that no part of it was his own; so he is now generous again in this latter transaction, in which, however, he shows, that he is neither generous nor just. He took the first money without right; and he did not apply it to the very service, for which it was pretended to be taken. He then tells you of another anecdote, which, he says, has an affinity to that anecdote, and here he is generous again. In the first, he appears to be generous and just, because he appears to give his own money, which he had a right to dispose of; then he tells you, he is neither generous nor just; for he had taken money he had no right to, and did not apply it to the service, for which he pre-

tended to have received it. And now he is generous again, because he gives two lack of his own money, and just, because he gives one lack, which belonged to the Company; but there is not an idea suggested from whom he took it.

But to proceed, my Lords; in this letter he tells you, he had given two-thirds his own money and one-third the Company's money. So it stood upon the 29th of November 1780. On the 5th of January following we see the business take a totally different turn; and then Mr. Hastings calls for three Company's bonds, upon two different securities, antedated to the first and second of October, for the three lack, which he before told them was two-thirds his own money, and one-third the Company's. He now declares the whole of it to be his own, and he thus applies by letter to the Board, of which he himself was a majority. "Honourable Sir and Sirs, Having had occasion to disburse the sum of three lacks of sicca rupees on account of secret services, which having been advanced from my own private cash, I request, that the same may be repaid to me in the following manner.

"A bond to be granted me upon the terms of the second loan, bearing date from 1 October, for one lack of sicca rupees.

"A bond

" A bond to be granted me upon the terms of the first loan, bearing date from 1 October, for one lack of sicca rupees.

" A bond to be granted me upon the terms of the first loan, bearing date from the 2d October, for one lack of sicca rupees." Here are two accounts, one of which must be directly and flatly false; for he could not have given two-thirds his own, and have supplied the other third from money of the Company's, and, at the same time, have advanced the whole as his own. He here goes the full length of the fraud; he declares, that it is all his own, so much his own, that he does not trust the Company with it, and actually takes their bonds as a security for it, bearing an interest to be paid to him when he thinks proper.

Thus it remained from the 5th of January 1781, till 16th December 1782, when this business takes another turn; and in a letter of his to the Company these bonds become all their own. All the money advanced is now, all of it, the Company's money. First, he says, two-thirds were his own: next, that the whole is his own: and the third account is, that the whole is the Company's, and he will account to them for it.

Now, he has accompanied this account with another

another very curious one. For when you come to look into the particulars of it, you will find, there are three bonds declared to be the Company's bonds, and which refer to the former transactions, namely, the money, for which he had taken the bonds: but when you come to look at the numbers of them, you will find, that one of the three bonds, which he had taken as his own, disappears; and another bond of another date and for a much larger sum is substituted in its place, of which he had never mentioned any thing whatever.—So that taking his first account, that two-thirds is his own money; then, that it is all his own; in the third, that it is all the Company's money; by a fourth account, given in a paper describing the three bonds, you will find, that there is one lack, which he does not account for, but substitutes, in its place, a bond before taken, as his own. He sinks and suppresses one bond; he gives two bonds to the Company, and to supply the want of the third, which he suppresses, he brings forward a bond for another sum, of another date, which he had never mentioned before. Here then you have four different accounts: if any one of them is true, every one of the other three is totally false. Such a system of cogging, such a system of fraud,

fraud, such a system of prevarication, such a system of falsehood, never was I believe before exhibited in the world.

In the first place, why did he take bonds at all from the Company for the money, that was their own? I must be cautious how I charge a legal crime. I will not charge it to be forgery, to take a bond from the Company for money, which was their own. He was employed to make out bonds for the Company, to raise money on their credit. He pretends he lent them a sum of money, which was not his to lend; but he gives their own money to them as his own, and takes a security for it. I will not say, that it is a forgery, but I am sure it is an offence as grievous, because it is as much a cheat as a forgery, with this addition to it, that the person so cheating is in a trust; he violates that trust, and, in so doing, he defrauds, and falsifies the whole system of the Company's accounts.

I have only to show, what his own explanation of all these actions was; because, it supersedes all observation of mine. Hear what prevaricating guilt says for the falsehood, and delusion, which had been used to cover it; and see, how he plunges deeper and deeper upon every occasion. This explanation arose out of another memorable bribe, which I must now beg leave to state to your Lordships.

About the time of the receipt of the former bribes, good fortune, as good things seldom come singly, is kind to him; and when he went up, and had nearly ruined the Company's affairs in Oude and Benares, he received a present of 100,000*l.* sterling, or thereabouts. He received bills for it in September 1781: and he gives the Company an account of it in January 1782. Remark in what manner the account of this money was given, and the purposes, for which he intends to apply it. He says, in this letter, "I received the offer of a considerable "sum of money, both on the Nabob's part, "and that of his ministers, as a present to my-"self, not to the Company: I accepted it with-"out hesitation, and gladly, being entirely "destitute both of means and credit, whether "for your service or the relief of my own ne-"cessities." My Lords, upon this you shall hear a comment, made by some abler persons than me. This donation was not made in species, but in bills upon the house of Gopaul Doss, who was then a prisoner in the hands of Cheit Sing. After mentioning, that he took this present for the Company, and for their exigencies, and partly for his own necessities, and in consequence of the distress of both, he desires the Company, in the moment of this their greatest distress, to award it to him, and

therefore

therefore he ends, "If you should adjudge the "deposit to me, I shall consider it as the most "honourable approbation and reward of my "labours; and I wish to owe my fortune to "your bounty. I am now in the fiftieth year "of my life: I have passed thirty-one years in "the service of the Company, and the greatest "part of that time in employments of the high-"est trust.—My conscience allows me boldly "to claim the merit of zeal and integrity; nor "has fortune been unpropitious to their exer-"tions. To these qualities I bound my pre-"tensions. I shall not repine, if you shall "deem otherwise of my services; nor ought "your decision, however it may disappoint my "hope of a retreat, adequate to the consequence "and elevation of the office, which I now "possess, to lessen my gratitude for having been "so long permitted to hold it, since it has at "least enabled me to lay up a provision, with "which I can be contented in a more humble "station."

And here your Lordships will be pleased incidentally to remark the circumstance of his condition of life, and his fortune, to which he appeals, and upon account of which he desires this money. Your Lordships will remember, that in 1773, he said (and this I stated to you from himself) that if he held his then office for a very

a very few years, he should be enabled to lay by an ample provision for his retreat. About nine years after that time, namely, in the month of January 1782, he finds himself rather pinched with want, but, however, not in so bad a way, but that the holding of his office had enabled him to lay up a provision, with which he could be contented in a more humble station. He wishes to have affluence: he wishes to have dignity; he wishes to have consequence and rank, but he allows, that he has competence. Your Lordships will see afterwards how miserably his hopes were disappointed; for the Court of Directors, receiving this letter from Mr. Hastings, did declare, that they could not give it to him, because the Act had ordered, "that no fees of office, perquisites, emoluments, or advantages whatsoever, should be accepted, received, or taken by such Governour General and Council, or any of them, in any manner, or on any account or pretence whatsoever:" and as the same Act further directs, "that no Governour General, or any of the Council, shall directly take, accept, or receive, of or from any person or persons, in any manner, or on any account whatsoever, any present, gift, donation, gratuity or reward, pecuniary or otherwise, or any promise or engagement for any present, gift, donation, gratuity, or reward;"

we

we cannot, were we so inclined, decree the amount of this present to the Governour General. And it is further enacted, " that any such present, gift, gratuity, donation or reward, accepted, taken or received, shall be deemed and construed to have been received to and for the sole use of the Company." And therefore they resolved, most unjustly and most wickedly, to keep it to themselves. The Act made it in the first instance the property of the Company, and they would not give it him. And one should think this, with his own former construction of the Act, would have made him cautious of taking bribes. You have seen what weight it had with him to stop the course of bribes, which he was in such a career of taking in every place, and with both hands.

Your Lordships have now before you this hundred thousand pounds, disclosed in a letter from Patna, dated the 20th January 1782. You find mystery and concealment in every one of Mr. Hastings's discoveries; for, which is a curious part of it, this letter was not sent to the Court of Directors, in their packet, regularly, but transmitted by Major Fairfax, one of his agents, to Major Scott, another of his agents, to be delivered to the Company. Why was this done? Your Lordships will judge, from that circuitous mode of transmission, whether he did not

not thereby intend to leave some discretion in his agent to divulge it or not. We are told, he did not, but your Lordships will believe that or not, according to the nature of the fact. If he had been anxious to make this discovery to the Directors, the regular way would have been to send his letter to the Directors immediately in the packet; but he sent it in a box to an agent; and that agent, upon due discretion, conveyed it to the Court of Directors. Here, however, he tells you nothing about the persons, from whom he received this money, any more than he had done respecting the two former sums.

On the second of May following the date of this Patna letter, he came down to Calcutta with a mind, as he himself describes it, greatly agitated. All his hope of plundering Benares had totally failed. The produce of the robbing of the Begums, in the manner your Lordships have heard, was all dissipated to pay the arrears of the armies: there was no fund left. He felt himself agitated and full of dread, knowing, that he had been threatened with having his place taken from him several times; and that he might be called home to render an account. He had heard, that inquiries had begun in a menacing form in Parliament; and though, at that time, Bengal was not struck at, there was a charge of bribery and peculation brought against

against the governour of Madras. With this dread, with a mind full of anxiety and perturbation, he writes a letter, as he pretends, on the 22d of May 1782. Your Lordships will remark, that when he came down to Calcutta from his expedition up the country, he did not, till the 22d of May, give any account whatever of these transactions; and that this letter, or pretended letter, of the 22d of May was not sent till the 16th of December following. We shall clearly prove, that he had abundant means of sending it, and by various ways, before the 16th of December 1782, when he enclosed in another letter that of the 22d of May. This is the letter of discovery; this is the letter, by which his breast was to be laid open to his employers, and all the obscurity of his transactions to be elucidated. Here are indeed new discoveries, but they are like many new discovered lands, exceedingly inhospitable, very thinly inhabited, and producing nothing to gratify the curiosity of the human mind.

This letter is addressed to the Honourable the Court of Directors, dated Fort William 22d May 1782. He tells them he had promised to account for the ten lack of rupees, which he had received, and this promise, he says, he now performs, and that he takes that opportunity of accounting with them likewise for several other

sums, which he had received. His words are: "This promise I now perform, and deeming it "consistent with the spirit of it, I have added "such other sums as have been occasionally "converted to the Company's property through "my means, in consequence of the like original "destination. Of the second of these sums you "have already been advised, in a letter, which "I had the honour to address the Honourable "Court of Directors, dated 29th November "1780. Both this and the third article were "paid immediately to the treasury, by my order "to the sub-treasurer to receive them on the "Company's account, but never passed through "my hands. The three sums, for which bonds "were granted, were in like manner paid to the "Company's treasury, without passing through "my hands, but their *application* was not spe- "cified. The sum of 50,000 current rupees "was received while I was on my journey to "Benares, and applied as expressed in the "account.

"As to the manner, in which these sums have "been expended, the reference, which I have "made of it in the accompanying account, to "the several accounts, in which they are cre- "dited, renders any other specification of it "unnecessary; *besides*, that those accounts

"either

" either have or will have received a much " stronger authentication than any, that I could " give to mine."

I wish your Lordships to attend to the next paragraph, which is meant by him to explain, why he took bribes at all; why he took bonds for some of them, as monies of his own, and not monies of the Company; why he entered some upon the Company's accounts, and why of the others he renders no account at all. Light, however, will beam upon you, as we proceed. " Why these sums were taken by me; why " they were, except the second, quietly trans- " ferred to the Company's use: why bonds " were taken for the first, and not for the rest, " might, were this matter exposed to the view " of the publick, furnish a variety of con- " jectures, to which it would be of little use to " reply. Were your Honourable Court to " question me on these points, I would answer, " that the sums were taken for the Company's " benefit, at times when the Company very " much needed them: that I either chose to " conceal the first receipts from publick cu- " riosity by receiving bonds for the amount, or " possibly acted without any studied design, " which my memory could at this distance of " time verify: and that I did not think it worth " my care to observe the same means with the

" rest. I trust, honourable Sirs, to your breasts " for a candid interpretation of my actions; and " assume the freedom to add, that I think my- " self, on such a subject, on such *an occasion*, " entitled to it." Lofty, my Lords! You see, that after the Directors had expected an explanation for so long a time, he says, Why these sums were taken by me, and except the second, quietly transferred to the Company's use, I cannot tell; why bonds were taken for the first, and not for the rest, I cannot tell; if this matter were exposed to view it would furnish a variety of conjectures. Here is an account, which is to explain the most obscure, the most mysterious, the most evidently fraudulent transactions. When asked, how he came to take these bonds, how he came to use these frauds, he tells you, he really does not know; that he might have this motive for it, that he might have another motive for it, that he wished to conceal it from publick curiosity; but, which is the most extraordinary, he is not quite sure, that he had any motive for it at all, which his memory can trace. The whole of this is a period of a year and a half; and here is a man, who keeps his account upon principles of whim and vagary. One would imagine he was guessing at some motive of a stranger. Why he came to take bonds for money not due to him; and why he enters

enters some, and not others, he knows nothing of these things: he begs them not to ask about it, because it will be of no use. You, foolish Court of Directors, may conjecture and conjecture on. You are asking me, why I took bonds to myself for money of yours, why I have cheated you, why I have falsified my account in such a manner. I will not tell you.

In the satisfaction, which he had promised to give them, he neither mentions the persons, the times, the occasions, or motives for any of his actions. He adds, "I did not think it worth "my care to observe the same means with the "rest." For some purposes, he thought it necessary to use the most complicated and artful concealments; for some, he could not tell what his motives were, and, for others, that it was mere carelessness. Here is the exchequer of bribery! Have I falsified any part of my original stating of it? an exchequer, in which the man, who ought to pay, receives; the man, who ought to give security, takes it; the man, who ought to keep an account, says, he has forgotten; an exchequer, in which oblivion was the Remembrancer: and to sum up the whole, an exchequer into the accounts of which it was useless to inquire. This is the manner, in which the account of near two hundred thousand pounds is given to the Court of Directors. You

can learn nothing in this business, that is any way distinct, except a premeditated design of a concealment of his transactions. That is avowed.

But there is a more serious thing behind. Who were the instruments of his concealment? No other, my Lords, than the Company's publick accountant. That very accountant takes the money, knowing it to be the Company's, and that it was only pretended to be advanced by Mr. Hastings for the Company's use. He sees Mr. Hastings make out bonds to himself for it, and Mr. Hastings makes him enter him as creditor, when in fact he was debtor. Thus he debauches the Company's accountant, and makes him his confederate. These fraudulent and corrupt acts, covered by false representations, are proved to be false, not by collation with any thing else, but false by a collation with themselves. This then is the account and his explanation of it; and in this insolent, saucy, careless, negligent manner a publick accountant, like Mr. Hastings, a man bred up a bookkeeper in the Company's service, who ought to be exact, physically exact in his account, has not only been vicious in his own account, but made the publick accounts vicious and of no value. But there is in this account another curious circumstance with regard to the deposit

of

of this sum of money, to which he referred, in his first paragraph of his letter of the 29th of November 1780. He states, that this deposit was made and passed into the hands of Mr. Larkins on the first of June. It did so; but it is not entered in the Company's accounts till November following. Now in all that intermediate space where was it? What account was there of it? It was entirely a secret between Mr. Larkins and Mr. Hastings, without a possibility of any one discovering any particular relative to it. Here is an account of two hundred thousand pounds received, juggled between the accountant and him, without a trace of it appearing in the Company's books. Some of those Committees, to whom for their diligence at least, I must say the Publick have some obligation, and in return for which they ought to meet with some indulgence, examining into all these circumstances, and having heard, that Mr. Hastings had deposited a sum of money in the hands of the Company's Sub-Treasurer in the month of June, sent for the Company's books. They looked over those books, but they did not find the least trace of any such sum of money, and not any account of it; nor could there be, because it was not paid to the Company's account till the November following. The accountant had received the money, but

never entered it from June till November. Then at last have we an account of it. But was it even then entered regularly upon the Company's accounts? No such thing; it is a deposit carried to the Governor General's credit. [*The entry of the several species, in which this deposit was made, was here read from the Company's General Journal of* 1780 *and* 1781.]

My Lords, when this account appears at last, when this money does emerge in the publick accounts, whose is it? Is it the Company's? No, Mr. Hastings's. And thus, if, notwithstanding this obscure account in November, the Directors had claimed and called for this affinity to an anecdote; if they had called for this anecdote and examined the account; if they had said, We observe here entered two lack and upwards; come, Mr. Hastings, let us see where this money is: they would find that it is Mr. Hastings's money, not the Company's; they would find that it is carried to his credit. In this manner he hands over this sum, telling them, on the 22d of May 1782, that not only the bonds were a fraud, but the deposit was a fraud; and that neither bonds, nor deposit, did in reality belong to him. Why did he enter it at all? then, afterwards, why did he not enter it as the Company's? Why make a false entry, to enter it as his own? and how came he, two years after,

after, when he does tell you that it was the Company's and not his own, to alter the publick accounts? But why did he not tell them at that time, when he pretends to be opening his breast to the Directors, from whom he received it, or say any thing to give light to the Company respecting it? who, supposing they had the power of dispensing with an act of parliament, or licensing bribery at their pleasure, might have been thereby enabled to say—here, you ought to have received it—there it might be oppressive and of dreadful example.

I have only to state, that in this letter, which was pretended to be written on the 22d of May 1782, your Lordships will observe, that he thinks it his absolute duty (and I wish to press this upon your Lordships, because it will be necessary in a comparison which I shall have hereafter to make,) to lay open all their affairs to them, to give them a full and candid explanation of his conduct, which he afterwards confesses he is not able to do. The paragraph has been just read to you. It amounts to this: I have taken many bribes—have falsified your accounts—have reversed the principle of them in my own favour; I now discover to you all these my frauds, and think myself entitled to your confidence upon this occasion. Now all the principles of diffidence; all the principles of distrust;

distrust; nay more, all the principles, upon which a man may be convicted of premeditated fraud, and deserve the severest punishment, are to be found in this case, in which, he says, he holds himself to be entitled to their confidence and trust. If any of your Lordships had a steward, who told you he had lent you your own money, and had taken bonds from you for it, and if he afterwards told you, that that money was neither yours nor his, but extorted from your tenants by some scandalous means; I should be glad to know what yonr Lordships would think of such a steward, who should say, I will take the freedom to add, that I think myself, on such a subject, on such an occasion, entitled to your confidence and trust. You will observe his cavalier mode of expression. Instead of his exhibiting the rigour and severity of an accountant and a book-keeper, you would think that he had been a reader of sentimental letters: there is such an air of a novel running through the whole, that it adds to the ridicule and nausea of it: it is an oxymel of squills; there is something to strike you with horror for the villany of it, something to strike you with contempt for the fraud of it; and something to strike you with utter disgust for the vile and bad taste, with which all these base ingredients are assorted.

Your Lordships will see, when the account, which

which is subjoined to this unaccountable letter, comes before you, that though the Company had desired to know the channels, through which he got those sums, there is not (except by a reference that appears in another place to one of the articles) one single syllable of explanation given from one end to the other; there is not the least glimpse of light thrown upon these transactions. But we have since discovered from whom he got these bribes; and your Lordships will be struck with horror when you hear it.

I have already remarked to you, that though this letter is dated upon the 22d of May, it was not despatched for Europe till December following; and he gets Mr. Larkins, who was his agent and instrument in falsifying the Company's accounts, to swear, that this letter was written upon the 22d of May, and that he had no opportunity to send it, but by the Lively in December. On the 16th of that month, he writes to the Directors, and tells them, that he is quite shocked to find he had no earlier opportunity of making this discovery, which he thought himself bound to make, though this discovery, respecting some articles of it, had now been delayed nearly two years, and though it since appears that there were many opportunities, and particularly by the Resolution, of sending it. He was much distressed,

tressed, and found himself in an awkward situation, from an apprehension that the parliamentary inquiry, which, he knew, was at this time in progress, might have forced from him this notable discovery. He says, "I do not fear the consequences of any parliamentary process." Indeed he needed not to fear any parliamentary inquiry, if it produced no further discovery than that which your Lordships have in the letter of the 22d of May, and in the accounts subjoined to it. He says, that "the delay is of no pub-"lick consequence; but it has produced "a situation, which, with respect to myself, "I regard as unfortunate, because it exposes "me to the meanest imputation, from the "occasion which the late parliamentary inquiries "have since furnished."

Now, here is a very curious letter, that I wish to have read for some other reasons, which will afterwards appear, but principally at present for the purpose of showing you, that he held it to be his duty, and thought it to the last degree dishonourable, not to give the Company an account of those secret bribes: he thought it would reflect upon him, and ruin his character for ever, if this account did not come voluntarily from him, but was extorted by terror of parliamentary inquiry. In this letter of the 16th December 1782, he thus writes:—"The delay is

"of

" of no publick consequence; but it has pro-
" duced a situation, which, with respect to my-
" self, I regard as unfortunate; because it
" exposes me to the meanest imputation, from
" the occasion, which the late parliamentary in-
" quiries have since furnished, but which were
" unknown when my letter was written, and
" written in the necessary consequence of a
" promise, made to that effect in a former letter
" to your honourable Committee, dated 20th
" January last. However, to preclude the pos-
" sibility of such reflections from affecting me,
" I have desired Mr. Larkins, who was privy to
" the whole transactions, to affix to the letter
" his affidavit of the date in which it was
" written. I own I feel most sensibly the mor-
" tification of being reduced to the necessity of
" using such precautions to guard my reputa-
" tion from dishonour. If I had, at any time,
" possessed that degree of confidence from my
" immediate employers, which they never with-
" held from the meanest of my predecessors,
" I should have disdained to use these atten-
" tions. How I have drawn on me a different
" treatment, I know not; it is sufficient that
" I have not merited it. And in the course of
" a service of thirty-two years, and ten of these
" employed in maintaining the powers, and dis-
" charging the duties of the first office of the
" British

" British Government in India, that honourable
" Court ought to know whether I possess the
" integrity and honour, which are the first re-
" quisites of such a station. If I wanted these,
" they have afforded me but too powerful in-
" centives to suppress the information, which
" I now convey to them through you; and to
" appropriate to my own use the sums, which
" I have already passed to their credit, by the
" unworthy, and, pardon me if I add, dangerous
" reflections, which they have passed upon me,
" for the first communication of this kind; and
" your own experience will suggest to you, that
" there are persons, who would profit by such
" a warning.

" Upon the whole of these transactions, which
" to you, who are accustomed to view business
" in an official and regular light, may appear
" unprecedented, if not improper, I have but
" a few short remarks to suggest to your con-
" sideration.

" If I appear in any unfavourable light by
" these transactions, I resign the common and
" legal security of those, who commit crimes or
" errours. I am ready to answer every particular
" question, that may be put against myself,
" upon honour, or upon oath.

" The sources, from which these reliefs to
" the publick service have come, would never

" have

" have yielded them to the Company publickly;
" and the exigencies of your service (exigencies
" created by the exposition of your affairs, and
" faction in your councils) required those
" supplies.

" I could have concealed them, had I had
" a wrong motive, from yours and the publick
" eye for ever; and I know that the difficul-
" ties, to which a spirit of injustice may subject
" me for my candour and avowal, are greater
" than any possible inconvenience, that could
" have attended the concealment, except the
" dissatisfaction of my own mind. These diffi-
" culties are but a few of those which I have
" suffered in your service. The applause of my
" own breast is my surest reward, and was the
" support of my mind in meeting them. Your
" applause, and that of my country, are my
" next wish in life."

Your Lordships will observe, at the end of this letter, that this man declares his first applause to be from his own breast, and that he next wishes to have the applause of his employers. But reversing this, and taking their applause first, let us see on what does he ground his hope of their applause? Was it on his former conduct? No, for he says, that conduct had repeatedly met with their disapprobation. Was it upon the confidence, which he knew

they

they had in him? No, for he says, they gave "more of their confidence to the meanest of "his predecessors." Observe, my Lords, the style of insolence he constantly uses with regard to all mankind. Lord Clive was his predecessor: Governor Cartier was his predecessor: Governor Verelst was his predecessor: every man of them as good as himself; and yet, he says, the Directors had given "more of their "confidence to the *meanest* of his predecessors." But what was to entitle him to their applause? a clear and full explanation of the bribes he had taken. Bribes was to be the foundation of their confidence in him, and the clear explanation of them was to entitle him to their applause! Strange grounds to build confidence upon—the rotten ground of corruption, accompanied with the infamy of its avowal! Strange ground to expect applause—a discovery, which was no discovery at all! Your Lordships have heard this discovery, which I have not taken upon me to state, but have read his own letter on the occasion. Has there, at this moment, any light broken in upon you concerning this matter?

But what does he say to the Directors? he says, "Upon the whole of these transactions, "which to you, who are accustomed to view "business in an official and regular light, "may

" may appear unprecedented, if not improper, " I have but a few short remarks to suggest to " your consideration." He looks upon them, and treats them, as a set of low mechanical men; a set of low-born book-keepers, as base souls, who, in an account, call for explanation and precision. If there is no precision in accounts, there is nothing of worth in them. You see, he himself is an eccentric accountant, a pindaric book-keeper, an arithmetician in the clouds. I know, he says, what the Directors desire: but they are mean people; they are not of elevated sentiments: they are modest; they avoid ostentation in taking of bribes: I therefore am playing cups and balls with them, letting them see a little glimpse of the bribes, then carrying them fairly away. Upon this he founds the applause of his own breast.

——*Populus me sibilat; at mihi plaudo*
Ipse domi, simul ac nummos contemplor in arcâ.—

That private *Ipse plaudo* he may have in this business, which is a busines of money; but the applause of no other human creature will he have for giving such an account as he admits this to be—irregular, uncertain, problematical, and of which no one can make either head or tail. He despises us also, who are representatives of the people, and have amongst us all the regular officers of finance, for expecting any thing like

a regular account from him. He is hurt at it; he considers it as a cruel treatment of him; he says, Have I deserved this treatment? Observe, my Lords, he had met with no treatment, if treatment it may be called, from us of the kind, of which he complains. The Court of Directors had, however, in a way, shameful, abject, low, and pusillanimous, begged of him, as if they were his dependants, and not his masters, to give them some light into the account; they desire a receiver of money to tell from whom he received it, and how he applied it. He answers, They may be hanged for a parcel of mean contemptible book-keepers, and that he will give them no account at all: he says—"If you sue me"—There is the point; he always takes security in a court of law. He considers his being called upon by these people, to whom he ought, as a faithful servant, to give an account, and to do which he was bound by an act of parliament specially entrusting him with the administration of the revenues, as a gross affront. He adds, that he is ready to resign his defence, and to answer upon honour, or upon oath. Answering upon honour is a strange way they have got in India, as your Lordships may see in the course of this inquiry. But he forgets, that being the Company's servant, the Company may bring a bill in Chancery against him, and force him, upon oath, to give an account. He

has

has not, however, given them light enough, or afforded them sufficient ground for a fishing bill in Chancery. Yet, he says, If you call upon me in a Chancery way, or by common law, I really will abdicate all forms, and give you some account. In consequence of this the Company did demand from him an account, regularly and as fully and formally as if they had demanded it in a court of justice. He positively refused to give them any account whatever; and they have never to this very day, in which we speak, had any account, that is at all clear or satisfactory. Your Lordships will see, as I go through this scene of fraud, falsification, iniquity, and prevarication, that in defiance of his promise, which promise they quote upon him over and over again, he has never given them any account of this matter.

He goes on to say, (and the threat is indeed alarming) that by calling him to account they may provoke him—to what? "To appropriate," he says, "to my own use, the sums, which I have "already passed to your credit, by the un- "worthy, and, pardon me, if I add, dangerous "reflections, which you have passed upon me "for the first communication of this kind." They passed no reflections: they said they would neither praise nor blame him, but pressed him

for an account of a matter, which they could not understand; and, I believe, your Lordships understand it no more than they, for it is not in the compass of human understanding to conceive or comprehend it. Instead of an account of it, he dares to threaten them—I may be tempted, if you should provoke me, not to be an honest man—to falsify your account a second time, and to reclaim those sums, which I have passed to your credit: to alter the account again by the assistance of Mr. Larkins. What a dreadful declaration is this of his dominion over the publick accounts, and of his power of altering them; a declaration, that, having first falsified those accounts in order to deceive them, and afterwards having told them of this falsification in order to gain credit with them; if they provoke him, he shall take back the money he had carried to their account, and make them his debtors for it. He fairly avows the dominion he has over the Company's accounts; and therefore, when he shall hereafter plead the accounts, we shall be able to rebut that evidence, and say, The Company's accounts are corrupted by you through your agent, Mr. Larkins, and we give no credit to them, because you not only told the Company you could do so, but we can prove that you have actually done it. What a strange medley

of

of evasion—pretended discovery, real concealment, fraud and prevarication appears in every part of this letter!

But admitting this letter to have been written upon the 22d of May, and kept back to the 16th of December, you would imagine that during all that interval of time, he would have prepared himself to give some light, some illustration of these dark and mysterious transactions, which carried fraud upon the very face of them. Did he do so? Not at all. Upon the 16th of December, instead of giving them some such clear accounts as might have been expected, he falls into a violent passion for their expecting them: he tells them it would be dangerous; and he tells them they knew who had profited by these transactions; thus, in order to strike terror into their breasts, hinting at some frauds which they had practised or protected. What weight this may have had with them I know not; but your Lordships will expect in vain that Mr. Hastings, after giving four accounts, if any one of which is true the other three must necessarily be false—after having thrown the Company's accounts into confusion, and being unable to tell, as he says himself, why he did so—will at last give some satisfaction to the Directors, who continued, in a humble meek way, giving him hints that he ought to do it. You have heard nothing yet

but the consequences of their refusing to give him the present of a hundred thousand pounds, which he had taken from the Nabob: they did right to refuse it to him; they did wrong to take it to themselves.

We now find Mr. Hastings on the river Ganges in September 1784: that Ganges whose purifying water expiates so many sins of the Gentoos, and which, one would think, would have washed Mr. Hastings's hands a little clean of bribery, and would have rolled down its golden sands like another Pactolus. Here we find him discovering another of his bribes. This was a bribe taken upon totally a different principle, according to his own avowal: it is a bribe not pretended to be received for the use of the Company; a bribe taken absolutely entirely for himself. He tells them, that he had taken between thirty and forty thousand pounds. This bribe, which, like the former, he had taken without right, he tells them that he intends to apply to his own purposes, and he insists upon their sanction for so doing. He says, he had in vain, upon a former occasion, appealed to their honour, liberality, and generosity; that he now appeals to their justice; and insists upon their decreeing this bribe, which he had taken, without telling them from whom, where, or on what account, to his own use.

Your

Your Lordships remember, that in the letter, which he wrote from Patna on the 20th of January 1782, he there states that he was in tolerable good circumstances, and that this had arisen from his having continued long in their service; now, he had continued two years longer in their service, and he is reduced to beggary! "This," he says, "is a single example of a life "spent in the accumulation of crores for your "benefit, and doomed, in its close, to suffer "the extremity of private want, and to sink in "obscurity."

So far back as in 1773, he thought that he could save an exceeding good fortune out of his place. In 1782 he says with gratitude, that he has made a decent private competency, but in two years after he sunk to the extremity of private want. And how does he seek to relieve that want? by taking a bribe: Bribes are no longer taken by him for the Company's service but for his own. He takes the bribe with an express intention of keeping it for his own use, and he calls upon the Company for their sanction. If the money was taken without right, no claim of his could justify its being appropriated to himself; nor could the Company so ropriate it, for no man has a right to be gener t another's goods. When he calls upon t j and generosity, they might answer, If

a just demand upon our treasury, state it, and we will pay it: if it is a demand upon our generosity, state your merits, and we will consider them. But I have paid myself by a bribe; I have taken another man's money; and I call upon your justice—to do what? To restore it to its owner? no; to allow me to keep it myself. Think, my Lords, in what a situation the Company stands. I have done a great deal for you: this is the jackall's portion; you have been the lion; I have been endeavouring to prog for you; I am your bribe-pander, your factor of corruption, exposing myself to every kind of scorn and ignominy, to insults, even from you. I have been preying and plundering for you, I have gone through every stage of licentiousness and lewdness, wading through every species of dirt and corruption for your advantage. I am now sinking into the extremity of private want; do give me this—what? money? no, this bribe; rob me the man who gave me this bribe; vote me—what? money of your own? that would be generous: money you owe me? that would be just; No, money, which I have extorted from another man, and I call upon your justice to give it me. This is his idea of justice. He says, "I am compelled to depart from that liberal "plan, which I originally adopted, and to claim "from your justice (for you have forbid me to

"appeal

" appeal to your generosity) the discharge of " a debt, which I can with the most scrupulous " integrity aver to be justly due, and which " I cannot sustain." Now, if any of the Company's servants may say, I have been extravagant —profuse—it was all meant for your good:—let me prey upon the country at my pleasure; license my bribes, frauds, and peculations, and then you do me justice. What country are we in, where these ideas are ideas of generosity and justice?

It might naturally be expected, that in this letter he would have given some account of the person, from whom he had taken this bribe. But here, as in the other cases, he had a most effectual oblivion; the Ganges, like Lethe, causes a drowsiness, as you saw in Mr. Middleton; they recollect nothing, they know nothing. He has not stated from that day to this, from whom he took that money: but we have made the discovery. And such is the use of parliamentary inquiries, such, too, both to the present age and posterity, will be their use, that, if we pursue them with the vigour, which the great trust justly imposed upon us, demands; and if your Lordships do firmly administer justice upon this man's frauds, you will at once put an end to those frauds and prevarications for ever. Your Lordships will see, that, in this inquiry, it is the diligence

ligence of the House of Commons, which he has the audacity to call *malice*, that has discovered and brought to light the frauds, which we shall be able to prove against him.

I will now read to your Lordships an extract from that stuff, called a defence, which he has either written himself, or somebody else has written for him, and which he owns, or disclaims, just as he pleases; when under the slow tortures of a parliamentary impeachment he discovered, at length from whom he got this last bribe. "The last part of the charge states, "that in my letter to the Court of Directors "of the 21st February 1784, I have confessed "to have received another sum of money, the "amount of which is not declared, but which, "from the application of it, could not be less "than thirty-four thousand pounds sterling, &c. "In the year 1783, when I was actually in want "of a sum of money for my private expenses, "owing to the Company not having at that "time sufficient cash in their treasury to pay "my salary, I borrowed three lacks of rupees "of Rajah Nobkissen, an inhabitant of Cal-"cutta, whom I desired to call upon me with "a bond properly filled up; he did so, but at "the time I was going to execute it, he en-"treated I would rather accept the money than "execute the bond. I neither accepted the

"offer

" offer nor refused it; and my determination " upon it remained suspended between the " alternative of keeping the money as a loan to " be repaid, and of taking it, and applying it, " as I had done other sums, to the Company's " use; and there the matter rested till I under- " took my journey to *Lucknow*, when I deter- " mined to accept the money for the Company's " use; and these were my motives:—Having " made disbursements from my own cash for " services, which, though required to enable me " to execute the duties of my station, I had " hitherto omitted to enter into my publick " account; I resolved to reimburse myself in " a mode most suitable to the situation of the " Company's affairs, by charging these dis- " bursements in my Durbar accounts of the " present year, and crediting them by a sum " privately received, which was this of Nob- " kissen's. If my claim on the Company were " not founded in justice, and *bonâ fide* due, my " acceptance of three lacks of rupees from " Nobkissen by no means precludes them from " recovering that sum from me. No member " of this Honourable House suspects me, I hope, " of the meanness and guilt of presenting false " accounts." We do not *suspect* him of pre- senting false accounts: we can prove, we are now radically proving, that he presents false accounts.

accounts. We suspect no man, who does not give ground for suspicion: we accuse no man, who has not given ground for accusation; and we do not attempt to bring before a court of justice any charges, which we shall not be able decisively to prove. This will put an end to all idle prattle of malice, of groundless suspicions of guilt, and of ill-founded charges. We come here to bring the matter to the test, and here it shall be brought to the test between the Commons of Great Britain and this East India delinquent. In his letter of the 21st of February 1784, he says, he has never benefited himself by contingent accounts; and as an excuse for taking this bribe from Nobkissen, which he did not discover at the time, but many years afterwards at the bar of the House of Commons, he declares, that he wanted to apply it to the contingent account for his expences, that is, for what he pretended to have laid out for the Company during a great number of years. He proceeds, "If it should be objected, that the "allowance of these demands would furnish "a precedent for others of the like kind, I have "to remark that in their whole amount they are "but the aggregate of a contingent account of "twelve years; and if it were to become the "practice of those, who have passed their "prime of life in your service, and filled, as I

"have

" have filled it, the first office of your dominion,
" to glean from their past accounts all the ar-
" ticles of expence, which their inaccuracy or
" indifference hath overlooked, your interests
" would suffer infinitely less by the precedent
" than by a single example of a life spent in the
" accumulation of crores for your benefit, and
" doomed in its close to suffer the extremity of
" private want, and to sink in obscurity." Here is the man, that has told us at the bar of the House of Commons, that he never made up any contingent accounts; and yet, as a set-off against this bribe, which he received for himself, and never intended to apply to the current use of the Company, he feigns and invents a claim upon them, namely, that he had, without any authority of the Company, squandered away in stationery, and budgerows, and other idle services, a sum amounting to 34,000 *l.* But was it for the Company's service? Is this language to be listened to? Every thing I thought fit to expend, I have expended for the Company's service.—I intended, indeed, at that time, to have been generous. I intended, out of my own pocket, to have paid for a translation of the code of Gentoo laws: I was then in the prime of my life, flowing in money and had great expectations: I am now old; I cannot afford to be generous: I will look back into all my former accounts,

accounts, pen, ink, wax, every thing, that I generously or prodigally spent, as my own humour might suggest; and though, at the same time, I know you have given me a noble allowance, I now make a charge upon you for this sum of money, and intend to take a bribe in discharge of it. Now, suppose Lord Cornwallis, who sits in the seat, and I hope will long, and honourably and worthily, fill the seat, which that gentleman possessed; suppose Lord Cornwallis, after never having complained of the insufficiency of his salary, and after having but two years ago said he had saved a sufficient competency out of it, should now tell you that 30,000*l.* a year was not enough for him, and that he was sinking into want and distress, and should justify upon that alleged want, taking a bribe, and then make out a bill of contingent expences to cover it; would your Lordships bear this?

Mr. Hastings has told you, that he wanted to borrow money for his own use, and that he applied to Rajah Nobkissin, who generously pressed it upon him as a gift. Rajah Nobkissin is a Banyan: you will be astonished to hear of generosity in a Banyan: there never was a Banyan and generosity united together; but Nobkissin loses his Banyan qualities at once the moment the light of Mr. Hastings's face beams upon him. Here, says Mr. Hastings, I have prepared

prepared bonds for you! Astonishing! how can you think of the meanness of bonds: you call upon me to lend you 34,000 *l.* and propose bonds; No, you shall have it; you are the Governour General, who have a large and ample salary; but I know you are a generous man, and I emulate your generosity: I give you all this money. Nobkissin was quite shocked at Mr. Hastings's offering him a bond. My Lords, a Gentoo Banyan is a person a little lower, a little more penurious, a little more exacting, a little more cunning, a little more money-making, than a Jew. There is not a Jew in the meanest corner of Duke's-place in London, that is so crafty, so much a usurer, so skilful how to turn money to profit, and so resolved not to give any money, but for profit, as a Gentoo broker of the class I have mentioned. But this man, however, at once grows generous, and will not suffer a bond to be given to him; and Mr. Hastings, accordingly, is thrown into very great distress. You see sentiment always prevailing in Mr. Hastings. The sentimental dialogue, which must have passed between him and a Gentoo broker, would have charmed every one, that has a taste for pathos and senti t. Mr. Hastings was pressed to receive the as a gift—he really does not k to whether to insist upon gi

whether he shall take the money for his own use, or whether he shall take it for the Company's use. But it may be said of man, as it is said of woman; the woman, who deliberates, is lost. The man, that deliberates about receiving bribes, is gone; the moment he deliberates, that moment his reason, the fortress, is lost—the walls shake; down it comes, and at the same moment enters Nobkissin into the citadel of his honour and integrity, with colours flying, with drums beating; and Mr. Hastings's garrison goes out, very handsomely indeed, with the honours of war, all for the benefit of the Company. Mr. Hastings consents to take the money from Nobkissin; Nobkissin gives the money, and is perfectly satisfied.

Mr. Hastings took the money with a view to apply it to the Company's service: How? to pay his own contingent bills. Every thing, that I do, says he, and all the money I squander, is all for the Company's benefit. As to particulars of accounts, never look into them; they are given you upon honour: let me take this bribe, it costs you nothing to be just or generous. I take the bribe: you sanctify it. But in every transaction of Mr. Hastings, where we have got a name, there we have got a crime. Nobkissin gave him the money, and did not take his bond, I believe, for it; but Nobkissin, we find, immediately

mediately afterwards enters upon the stewardship or management of one of the most considerable districts in Bengal. We know very well, and shall prove to your Lordships in what manner such men rack such districts, and exact from the inhabitants the money to repay themselves for the bribes, which had been taken from them. These bribes are taken under a pretence of the Company's service; but sooner or later they fall upon the Company's treasury. And we shall prove that Nobkissin, within a year from the time when he gave this bribe, had fallen into arrears to the Company, as their steward, to the amount of a sum, the very interest of which, according to the rate of interest in that country, amounted to more than this bribe, taken, as was pretended, for the Company's service. Such are the consequences of a Banyan's generosity, and of Mr. Hastings's gratitude, so far as the interest of the country is concerned; and this is a good way to pay Mr. Hastings's contingent accounts. But this is not all; a most detestable villain is sent up into the country to take the management of it, and the fortunes of all the great families in it are given entirely into his power. This is the way, by which the Company are to keep their own servants from falling into "the extremity of private want." And the Company itself, in this pretended saving to their

treasury by the taking of bribes, lose more than the amount of the bribes received. Wherever a bribe is given on one hand, there is a balance accruing on the other. No man, who had any share in the management of the Company's revenues, ever gave a bribe, who did not either extort the full amount of it from the country, or else fall in balance to the Company to that amount, and frequently both. In short, Mr. Hastings never was guilty of corruption, that blood and rapine did not follow; he never took a bribe, pretended to be for their benefit, but the Company's treasury was proportionably exhausted by it.

And now was this scandalous and ruinous traffick in bribes brought to light by the Court of Directors? No, we got it in the House of Commons. These bribes appear to have been taken at various times, and upon various occasions; and it was not till his return from Patna in February 1782, that the first communication of any of them was made to the Court of Directors. Upon the receipt of this letter, the Court of Directors wrote back to him, requiring some further explanation upon the subject. No explanation was given, but a communication of other bribes was made in his letter, said to be written in May of the same year, but not dispatched to Europe till the

December

December following. This produced another requisition from the Directors for explanation. And here your Lordships are to observe, that this correspondence is never in the way of letters written and answers given; but he and the Directors are perpetually playing at hide and seek with each other, and writing to each other at random; Mr. Hastings making a communication one day, the Directors requiring an explanation the next; Mr. Hastings giving an account of another bribe on the third day, without giving any explanation of the former. Still, however, the Directors are pursuing their chase. But it was not till they learned that the Committees of the House of Commons (for Committees of the House of Commons had then some weight,) were frowning upon them for this collusion with Mr. Hastings, that at last some honest men in the direction were permitted to have some ascendency; and that a proper letter was prepared, which I shall show your Lordships, demanding from Mr. Hastings an exact account of all the bribes, that he had received; and painting to him, in colours as strong at least as those I use, his bribery, his frauds, and peculations; and, what does them great honour for that moment, they particularly direct that the money, which was taken from the Nabob of Oude, should be carried to his account.

July 1785, addressed to William Devaynes, esq.; * and it begins thus: "Sir, The honour-
"able Court of Directors, in their general letter
"to Bengal, by the Surprize, dated the 16th
"of March 1784, were pleased to express their
"desire, that I should inform them of the periods
"when each sum of the presents mentioned in
"my address of the 22d May 1782, was re-
"ceived; what were my motives for withholding
"the several receipts from the knowledge of the
"Council, or of the Court of Directors; and
"what were my reasons for taking bonds for
"part of these sums, and for paying other sums
"into the treasury as deposits, on my own
"account." I wish your Lordships to pause a moment. Here is a letter written in July 1785; you see that from the 29th of December 1780, till that time, during which interval, though convinced in his own conscience, and though he had declared his own opinion, of the necessity of giving a full explanation of these money transactions, he had been imposing upon the Directors false and prevaricating accounts of them, they were never able to obtain a full disclosure from him.

He goes on. "I have been kindly apprized
"that the information required as above, is yet
"expected

* See this Letter in the Appendix to Vol. XII.

" expected from me. I hope that the circum-
" stances of my past situation, when considered,
" will plead my excuse for having thus long
" withheld it. The fact is, that I was not at
" the Presidency when the Surprize arrived;
" and when I returned to it, my time and atten-
" tion were so entirely engrossed, to the day of
" my final departure from it, by a variety of
" other more important occupations, of which,
" Sir, I may safely appeal to your testimony,
" grounded on the large portion contributed by
" myself of the volumes, which compose our
" consultations of that period."

These consultations, my Lords, to which he appeals, form matter of one of the charges, that the Commons have brought against Mr. Hastings; namely, a fraudulent attempt to ruin certain persons employed in subordinate situations under him, for the purpose, by intruding himself into their place, of secretly carrying on his own transactions. These volumes of consultation were written to justify that act. He next says,
" The submission, which my respect would
" have enjoined me to pay to the command
" imposed on me, was lost to my recollection
" perhaps from the stronger impression, which
" the first and distant perusal of it had left on
" my mind, that it was rather intended as a re-
" prehension for something, which had given

" offence in my report of the original transac-
" tion, than an expression of any want of a fur-
" ther elucidation of it." Permit me to make a few remarks upon this extraordinary passage. A letter is written to him, containing a repetition of the request, which had been made a thousand times before, and with which he had as often promised to comply. And here he says, " it was lost to my recollection." Observe his memory; he can forget the command, but he has an obscure recollection that he thought it a reprehension rather than a demand! Now a reprehension is a stronger mode of demand. When I say to a servant, Why have you not given me the account, which I have so often asked for? is he to answer, The reason I have not given it, is because I thought you were railing at and abusing me? He goes on, " I will now en-
" deavour to reply to the different questions,
" which have been stated to me, in as explicit
" a manner as I am able; to such information
" as I can give, the honourable Court is fully
" entitled; and where that shall prove defective,
" I will point out the only means, by which it
" may be rendered more complete." In order that your Lordships may thoroughly enter into the spirit of this letter, I must request that you will observe, how handsomely and kindly these tools of Directors have expressed themselves to him;

him; and that even their baseness and subserviency to him were not able to draw from him any thing, that could be satisfactory to his enemies; for as to these his friends, he cares but little about satisfying them, though they call upon him in consequence of his own promise; and this he calls a reprehension. They thus express themselves: "Although it is not our "intention to express any doubt of the integrity "of the Governour General; on the contrary, "after having received the presents, we cannot "avoid expressing our approbation of his con-"duct, in bringing them to the credit of the "Company, yet we must confess the statement "of those transactions appears to us in many "points so unintelligible, that we feel ourselves "under the necessity of calling on the Go-"vernour General for an explanation, agreeable "to his promise, voluntarily made to us. We "therefore desire to be informed of the different "periods when each sum was received, and "what were the Governour General's motives "for withholding the several receipts from the "knowledge of the Council and of the Court "of Directors, and what were his reasons for "taking bonds for part of these sums, and paying "other sums into the treasury as deposits upon "his own account." Such is their demand, and this is what his memory furnishes as nothing but

but a reprehension. He then proceeds: "First, "I believe I can affirm with certainty, that the "several sums mentioned in the account, trans- "mitted with my letter above-mentioned, were "received at or within a very few days of the "dates, which are affixed to them in the ac- "count. But as this contains only the gross "sums, and each of these was received in dif- "ferent payments, though at no great distance "of time, I cannot therefore assign a great "degree of accuracy to the account." Your Lordships see, that after all he declares he cannot make his account accurate; he further adds, "Perhaps the honourable Court will judge this "sufficient" that is, this explanation, namely, that he can give none "for any purpose, to "which their inquiry was directed; but, if it "should not be so, I will beg leave to refer, for "a more minute information, and for the means "of making any investigation, which they may "think it proper to direct respecting the par- "ticulars of this transaction, to Mr. Larkins, "your Accountant General, who was privy to "every process of it, and possessed, as I believe, "the original paper, which contained the only "account, that I ever kept of it."

Here is a man, who of his bribe accounts cannot give an account in the country where they are carried on. When you call upon him

in

in Bengal, he cannot give the account, because he is in Bengal: when he comes to England, he cannot give the account here, because his accounts are left in Bengal. Again, he keeps no accounts himself, but his accounts are in Bengal, in the hands of somebody else; to him he refers, and we shall see what that reference produced. "In this, each receipt was, as I recollect, spe-
"cifically inserted with the name of the person,
"by whom it was made; and I shall write to
"him to desire, that he will furnish you with
"the paper itself, if it is still in being, and in
"his hands, or with whatever he can distinctly
"recollect concerning it." Here are accounts kept for the Company, and yet he does not know, whether they are in existence any where.
"For my motives for withholding the several
"receipts from the knowledge of the Council,
"or of the Court of Directors, and for taking
"bonds for part of these sums, and paying
"others into the treasury as deposits on my
"own account, I have generally accounted in
"my letter to the honourable the Court of
"Directors, of the 22d of May 1782; namely,
"that I either chose to conceal the first receipts
"from publick curiosity, by receiving bonds for
"the amount, or possibly acted without any
"studied design, which my memory, at that
"distance of time, could verify; and that I did
"not

" not think it worth my care to observe the
" same means with the rest. It will not be
" expected, that I should be able to give a more
" correct explanation of my intentions, after
" a lapse of three years, having declared at the
" time that many particulars had escaped my
" remembrance: neither shall I attempt to add
" more than the clearer affirmation of the facts
" implied in that report of them, and such in-
" ferences as necessarily or with a strong pro-
" bability follow them."

You have heard of that oriental *figure* called, in the Banyan language, a *painche*; in English, a *screw:* it is a puzzled and studied involution of a period, framed in order to prevent the discovery of truth, and the detection of fraud; and surely it cannot be better exemplified than in this sentence: " Neither shall I attempt to add
" more than the clearer affirmation of the facts
" implied in that report of them, and such in-
" ferences as necessarily or with a strong pro-
" bability follow them." Observe, that he says, " *not facts stated,* but *facts implied in the report*" —and of what was this to be a report? Of things, which the Directors declared they did not understand; and then the inferences, which are to follow these implied facts are to follow them--But how? *With a strong probability.* If you have a mind to study this oriental figure of rhetorick,

rhetorick, the *panic*; here it is for you in its most complete perfection. No rhetorician ever gave an example of any figure of oratory, that can match this. But let us endeavour to unravel the whole passage. First, he states, that in May 1782, he had forgotten his motives for falsifying the Company's accounts; but he affirms the facts contained in the report, and afterwards, very rationally, draws such inferences as necessarily or with a strong probability follow them. And, if I understand it at all, which, God knows, I no more pretend to do, than Don Quixote did those sentences of lovers in romance writers, of which, he said, it made him run mad to attempt to discover the meaning; the inference is, Why do you call upon me for accounts now, three years after the time, when I could not give you them? I cannot give them you; and, as to the papers relating to them, I do not know whether they exist: and if they do, perhaps you may learn something from them: perhaps you may not: I will write to Mr. Larkins for those papers, if you please. Now, comparing this with his other accounts, you will see what a monstrous scheme he has laid of fraud and concealment to cover his peculation. He tells them, "I have said, that the "three first sums of the account were paid into "the Company's treasury, without passing "through

" through my hands. The second of these was
" forced into notice by its destination and ap-
" plication to the expence of a detachment,
" which was formed and employed against
" Mahdajee Scindia, under the command of
" Lieutenant Colonel Camac, as I particularly
" apprized the Court of Directors in my letter
" of the 29th December 1780." He does not yet tell the Directors, from whom he received it; we have found it out by other collateral means. " The other two were certainly not
" intended, when I received them, to be made
" publick, though intended for publick service,
" and actually applied to it. The exigencies of
" Government were at that time my own, and
" every pressure upon it rested with its full
" weight upon my mind. Wherever I could
" find allowable means of relieving those wants,
" I eagerly seized them." Allowable means of receiving bribes! for such I shall prove them to be in the particular instances. " But neither
" could it occur to me as necessary to state on
" our proceedings every little aid, that I could
" thus procure, nor do I know how I could
" have stated it, without appearing to court
" favour by an ostentation, which I disdained,
" nor without the chance of exciting the jealousy
" of my colleagues by the constructive assertion
" of a separate and unparticipated merit, de-

" rived

" rived from the influence of my station, to " which they might have had an equal claim."

Now we see, that, after hammering his brains for many years, he does find out his motive, which he could not verify at the time; namely, that if he let his colleagues know that he was receiving bribes, and gaining the glory of receiving them, they might take it into their heads likewise to have their share in the same glory, as they were joined in the same commission, enjoyed the same powers, and were subject to the same restrictions. It was indeed scandalous in Mr. Hastings, not behaving like a good fair colleague in office, not to let them know that he was going on in this career of receiving bribes, and to deprive them of their share in the glory of it; but they were grovelling creatures, who thought that keeping clean hands was some virtue. Well, but you have applied some of these bribes to your own benefit; why did you give no account of those bribes? I did not, he says, because it might have excited the envy of my colleagues. To be sure, if he was receiving bribes for his own benefit, and they not receiving such bribes, and if they had a liking to that kind of traffick, it is a good ground of envy, that a matter, which ought to be in common among them, should be confined to Mr. Hastings, and he therefore did well to conceal it;

and,

and, on the other hand, if we suppose him to have taken them, as he pretends, for the Company's use, in order not to excite a jealousy in his colleagues for being left out of this meritorious service, to which they had an equal claim, he did well to take bonds for what ought to be brought to the Company's accounts. These are reasons applicable to his colleagues, who sat with him at the same board: Mr. Macpherson, Mr. Stables, Mr. Wheler, General Clavering, Colonel Monson, and Mr. Francis: he was afraid of exciting their envy or their jealousy. You will next see another reason, and an extraordinary one it is, which he gives for concealing these bribes from his inferiours.

But I must first tell your Lordships, what, till the proof is brought before you, you will take on credit--indeed it is on his credit, that when he formed the committee of revenue, he bound them by a solemn oath, "not, under "any name or pretence whatever, to take "from any zemindar, farmer, person concerned "in the revenue, or any other, any gift, gra-"tuity, allowance or reward whatever, or "any thing beyond their salary;" and this is the oath to which he alludes. Now his reason for concealing his bribes from his inferiours, this committee, under these false and fraudulent bonds, he states thus: "I should have "deemed

" deemed it particularly dishonourable to re-
" ceive for my own use, money tendered by
" a certain class, from whom I had interdicted
" the receipt of presents to my inferiours, and
" bound them, by oath, not to receive them:
" I was therefore more than ordinarily cautious
" to avoid the suspicion of it, which would
" scarcely have failed to light upon me, had
" I suffered the money to be brought to my
" own house, or that of any person known to
" be in trust for me." My Lords, here he comes before you, avowing, that he knew the practice of taking money from these people was a thing dishonourable in itself. "I should have " deemed it particularly dishonourable to re-" ceive, for my own use, money tendered by " men of a certain class, from whom I had " interdicted the receipt of presents to my " inferiours, and bound them, by oath, not to " receive them." He held it particularly dishonourable to receive them: he had bound others by an oath not to receive them: but he received them himself, and why does he conceal it? why; because, says he, if the suspicion came upon me, the dishonour would fall upon my pate. Why did he, by an oath, bind his inferiours not to take these bribes? Why, because it was base and dishonourable so to do; and because it would be mischievous and

ruinous to the Company's affairs to suffer them to take bribes. Why then did he take them himself? It was ten times more ruinous, that he, who was at the head of the Company's government, and had bound up others so strictly, should practise the same himself; and, therefore, says he, "I was more than ordinarily "cautious."—What? To avoid it? No; to carry it on in so clandestine and private a manner, as might secure me from the suspicion of that, which I know to be detestable, and bound others up from practising.

We shall prove, that the kind of men, from whom he interdicted his committee to receive bribes, were the identical men from whom he received them himself. If it was good for him, it was good for them to be permitted these means of extorting; and, if it ought at all to be practised, they ought to be admitted to extort for the good of the Company. Rajah Nobkissin was one of the men, from whom he interdicted them to receive bribes, and from whom he received a bribe for his own use. But he says, he concealed it from them, because he thought great mischief might happen even from their suspicion of it, and lest they should thereby be inclined themselves to practise it, and to break their oaths.

You take it then for granted, that he really concealed

concealed it from them: No such thing; his principal confidant in receiving these bribes was Mr. Crofts, who was a principal person in this board of revenue, and whom he had made to swear not to take bribes: he is the confidant, and the very receiver, as we shall prove to your Lordships. What will your Lordships think of his affirming, and averring a direct falsehood, that he did it to conceal it from these men, when one of them was his principal confidant and agent in the transaction? What will you think of his being more than ordinarily cautious to avoid the suspicion of it? He ought to have avoided the crime, and the suspicion would take care of itself. "For these reasons, he says, "I caused it to be transported immediately to "the treasury. There I well knew, sir, it could "not be received, without being passed to some "credit, and this could only be done by entering "it as a loan, or as a deposit. The first was the "least liable to reflection; and therefore I had "obviously recourse to it. Why the second "sum was intended as a deposit, I am utterly "ignorant. Possibly it was done without any "special direction from me; possibly because "it was the simplest mode of entry, and there-"fore preferred, as the transaction itself did "not require concealment, having been already "avowed." My Lords, in fact, every word of

this is either false or groundless: it is completely fallacious in every part. The first sum, he says, was entered as a loan; the second as a deposit. Why was this done? Because, when you enter monies of this kind, you must enter them under some name, some head of account; and I entered them, he says, under these, because, otherwise there was no entering them at all. Is this true? Will he stick to this? I shall desire to know from his learned counsel, sometime or other, whether that is a point he will take issue upon. Your Lordships will see there were other bribes of his, which he brought under a regular official head, namely, *Durbar charges*; and there is no reason why he should not have brought these under the same head. Therefore what he says, that there is no other way of entering them but as loans and deposits, is not true. He next says, that in the second sum there was no reason for concealment, because it was avowed: but that false deposit was as much concealment as the false loan, for he entered that money as his own; whereas when he had a mind to carry any money to the Company's account, he knew how to do it, for he had been accustomed to enter it under a general name, called Durbar charges; a name, which, in its extent at least, was very much his own invention, and which, as he gives no account of those

charges,

charges, is as large and sufficient to cover any fraudulent expenditure in the account, as, one would think, any person could wish. You see him, then, first guessing one thing, then another; first giving this reason, then another: at last, however, he seems to be satisfied, that he has hit upon the true reason of his conduct.

Now let us open the next paragraph, and see what it is. "Although I am firmly persuaded, "that these were my sentiments on the oc- "casion, yet I will not affirm that they were. "Though I feel their impression as the remains "of a series of thoughts retained on my me- "mory, I am not certain that they may not "have been produced by subsequent reflection "on the principal fact, combining with it the "probable motives of it. Of this I am certain, "that it was my design originally to have con- "cealed the receipt of all the sums, except the "second, even from the knowledge of the Court "of Directors. They had answered my purpose "of publick utility, and I had almost dismissed "them from my remembrance." My Lords, you will observe in this most astonishing account, which he gives here, that several of these sums he meant to conceal for ever, even from the knowledge of the Directors. Look back to his letter of 22d May 1782, and his letter of the 16th of December, and in them he tells you,

that he might have concealed them, but that he was resolved not to conceal them: that he thought it highly dishonourable so to do; that his conscience would have been wounded, if he had done it; and that he was afraid it would be thought, that this discovery was brought from him in consequence of the parliamentary inquiries. Here, he says of a discovery, which he values himself upon making voluntarily, that he is afraid it should be attributed to arise from motives of fear. Now, at last, he tells you, from Cheltenham, at a time when he had just cause to dread the strict account, to which he is called this day: first, that he cannot tell whether any one motive, which he assigns, either in this letter, or in the former, were his real motive or not; that he does not know, whether he has not invented them since, in consequence of a train of meditation, upon what he might have done, or might have said; and, lastly, he says, contrary to all his former declarations, "that he "had never meant nor could give the Directors "the least notice of them at all, as they had "answered his purpose, and he had dismissed "them from his remembrance." I intended, he says, always to keep them secret, though I have declared to you solemnly, over and over again, that I did not. I do not care how you discovered them; I have forgotten them; I have dismissed

dismissed them from my remembrance. Is this the way, in which money is to be received and accounted for?

He then proceeds thus: "But when fortune "threw a sum of money in my way of a mag- "nitude, which could not be concealed, and "the peculiar delicacy of my situation at the "time I received it, made me more circumspect "of appearances; I chose to apprize my em- "ployers of it, which I did hastily and gene- "rally: hastily, perhaps, to prevent the vigi- "lance and activity of secret calumny; and "generally, because I knew not the exact "amount, of which I was in the receipt, but "not in the full possession. I promised to ac- "quaint them with the result as soon as I should "be in possession of it; and, in the perform- "ance of my promise, I thought it consistent "with it to add to the amount all the former "appropriations of the same kind; my good "genius then suggesting to me, with a spirit of "caution, which might have spared me the "trouble of this apology, had I universally at- "tended to it, that if I had suppressed them, "and they were afterwards known, I might be "asked, what were my motives for withholding "a part of these receipts from the knowledge "of the Court of Directors, and informing "them of the rest, it being my wish to clear

"up every doubt." I am almost ashamed to remark upon the tergiversations, and prevarications, perpetually ringing the changes in this declaration. He would not have discovered this hundred thousand pounds, if he could have concealed it: he would have discovered it, lest malicious persons should be telling tales of it. He has a system of concealment; he never discovers any thing, but when he thinks it can be forced from him. He says, indeed, I could conceal these things for ever, but my conscience would not give me leave: but it is guilt, and not honesty of conscience, that always prompts him. At one time it is the malice of people and the fear of misrepresentation, which induced him to make the disclosure; and he values himself on the precaution, which this fear had suggested to him. At another time it is the magnitude of the sum, which produced this effect: nothing but the impossibility of concealing it could possibly have made him discover it. This hundred thousand pounds he declares he would have concealed, if he could, and yet he values himself upon the discovery of it. Oh my Lords, I am afraid that sums of much greater magnitude have not been discovered at all. Your Lordships now see some of the artifices of this letter. You see the variety of styles he adopts, and how he turns himself into every shape, and every form. But

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after all, do you find any clear discovery? do you find any satisfactory answer to the Directors' letter? does he once tell you from whom he received the money? does he tell you for what he received it? what the circumstances of the persons giving it were, or any explanation whatever of his mode of accounting for it? No; and here, at last, after so many years litigation, he is called to account for his prevaricating false accounts in Calcutta, and cannot give them to you.

His explanation of his conduct relative to the bonds, now only remains for your Lordships' consideration. Before he left Calcutta in July 1784, he says, when he was going upon a service, which he thought a service of danger, he indorsed the false bonds, which he had taken from the Company, declaring them to be none of his. You will observe, that these bonds had been in his hands from the ninth or fifteenth of January (I am not quite sure of the exact date) to the day when he went upon this service, some time in the month of July 1784. This service he had formerly declared he did not apprehend to be a service of danger: but he found it to be so after: it was in anticipation of that danger, that he made this attestation and certificate upon the bonds. But who ever saw them? Mr. Larkins saw them, says he: I gave them Mr. Larkins.

Larkins. We will show you hereafter, that Mr. Larkins deserves no credit in this business; that honour binds him not to discover the secrets of Mr. Hastings. But why did he not deliver them up entirely, when he was going upon that service? for all pretence of concealment in the business was now at an end, as we shall prove. Why did he not cancel these bonds? why keep them at all? why not enter truly the state of the account in the Company's records. But I indorsed them, he says: Did you deliver them so indorsed in to the Treasury? No, I delivered them indorsed into the hands of my bribe broker and agent. But why not destroy them or give them up to the Company, and say you were paid, which would have been the only truth in this transaction? Why did you not indorse them before? why not during the long period of so many years, cancel them? No, he kept them to the very day when he was going from Calcutta, and had made a declaration, that they were not his. Never before, upon any account, had they appeared; and though the Committee of the House of Commons, in the eleventh Report, had remarked upon all these scandalous proceedings and prevarications, yet he was not stimulated, even then, to give up these bonds. He held them in his hands, till the time when he was preparing for his departure from Calcutta,

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in spite of the Directors, in spite of the Parliament, in spite of the cries of his own conscience, in a matter, which was now grown publick, and would knock doubly upon his reputation and conduct. He then declares, they are not for his own use, but for the Company's service. But were they then cancelled? I do not find a trace of their being cancelled. In this letter of the 17th of January 1785, he says, "With "regard to these bonds: the following sums "were paid into the Treasury, and bonds "granted for the same, in the name of the "Governour General, in whose possession the "bonds remain, with a declaration upon each, "indorsed, and signed by him, that he has no "claim on the Company for the amount either "of principal or interest, no part of the latter "having been received."

To the account of the twenty-second of May, of the indorsement, is added the declaration upon oath. But why any man need to declare upon oath, that the money, which he has fraudulently taken and concealed from another person, is not his, is the most extraordinary thing in the world: If he had a mind to have it placed to his credit as his own, then an oath would be necessary: but, in this case, any one would believe him upon his word. He comes, however, and

and says, This is indorsed upon oath. Oath! before what magistrate? In whose possession were the bonds? were they given up? There is no trace of that upon the record, and it stands for him to prove, that they were ever given up, and in any hands but Mr. Larkins's and his own. So here are the bonds, began in obscurity and ending in obscurity, ashes to ashes, dust to dust, corruption to corruption, and fraud to fraud. This is all we see of these bonds, till Mr. Larkins, to whom he writes some letter concerning them, which does not appear, is called to read a funeral sermon over them.

My Lords, I am come now near the period of this class of Mr. Hastings's bribes. I am a little exhausted. There are many circumstances, that might make me wish not to delay this business by taking up another day at your Lordships' bar, in order to go through this long intricate scene of corruption. But my strength now fails me. I hope within a very short time, to-morrow or the next court day, to finish it, and to go directly into evidence, as I long much to do, to substantiate the charge; but it was necessary that the evidence should be explained. You have heard as much of the drama as I could go through; bear with my weakness a little. Mr. Larkins's letter will be the epilogue to it.

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I have already incurred the censure of the prisoner; I mean to increase it by bringing home to him the proof of his crimes, and to display them in all their force and turpitude. It is my duty to do it; I feel it an obligation nearest to my heart.

TRIAL

OF

WARREN HASTINGS, ESQ.

TUESDAY, MAY 7th, 1789.

(MR. BURKE.)

MY LORDS,

WHEN I had the honour last to address you from this place, I endeavoured to press this position upon your minds, and to fortify it by the example of the proceedings of Mr. Hastings, that obscurity and inaccuracies in a matter of account constituted a just presumption of fraud. I showed, from his own letters, that his accounts were confused and inaccurate. I am ready, my Lords, to admit, that there are situations, in which a minister, in high office, may use concealment; it may be his duty to use concealment from the enemies of his masters: it may be prudent to use concealment from his inferiours in the service. It will always be suspicious to use concealment from his colleagues, and co-ordinates in office. But when, in a money transaction, any man uses concealment

ment with regard to them to whom the money belongs, he is guilty of a fraud. My Lords, I have shown you, that Mr. Hastings kept no account, by his own confession, of the monies, that he had privately taken, as he pretends, for the Company's service, and we have but too much reason to presume, for his own. We have shown you, my Lords, that he has not only no accounts, but no memory: we have shown, that he does not even understand his own motives; that, when called upon to recollect them, he begs to guess at them; and that as his memory is to be supplied by his guess, so he has no confidence in his guesses. He at first finds, after a lapse of about a year and a half or somewhat less, that he cannot recollect what his motives were to certain actions, which upon the very face of them appeared fraudulent. He is called to an account some years after, to explain what they were, and he makes a just reflection upon it: namely, that as his memory did not enable him to find out his own motive at the former time, it is not to be expected that it would be clearer a year after. Your Lordships will, however, recollect, that in the Cheltenham letter, which is made of no perishable stuff, he begins again to guess; but after he has guessed, and guessed again, and after he has gone through all the motives he can possibly assign for the action, he

he tells you, he does not know, whether those were his real motives, or whether he has not invented them since.

In that situation the accounts of the Company were left, with regard to very great sums, which passed through Mr. Hastings's hands, and for which he, instead of giving his masters credit, took credit to himself; and, being their debtor as he confesses himself to be, at that time, took a security for that debt, as if he had been their creditor. This required explanation: explanation he was called upon for, over and over again: explanation he did not give, and declared, he could not give. He was called upon for it when in India; he had not leisure to attend to it there. He was called upon for it when in Europe; he then says, he must send for it to India. With much prevarication, and much insolence too, he confesses himself guilty of falsifying the Company's accounts by making himself their creditor, when he was their debtor, and giving false accounts of this false transaction. The Court of Directors was slow to believe him guilty; Parliament expressed a strong suspicion of his guilt, and wished for further information. Mr. Hastings, about this time, began to imagine his conscience to be a faithful and true monitor, which it were well he had attended to upon many occasions, as it would

uld have saved him his appearance here; and told him, that he was in great danger from the liamentary inquiries, that were going on. It s now to be expected, that he would have en in haste to fulfil the promise, which he had de in the Patna letter of the 20th of January 82; and accordingly we find that about this ne his first agent, Major Fairfax, was sent over Europe, which agent entered himself at the dia House, and appeared before the Committe of the House of Commons, as an agent pressly sent over to explain whatever might pear doubtful in his conduct. Major Fairfax, twithstanding the character, in which Mr. stings employed him, appeared to be but etter carrier: he had nothing to say, he gave em no information in the India House at all; the Committee (I can speak with the clearness a witness) he gave us no satisfaction whatr. However, this agent vanished in a mot, in order to make way for another, more stantial, more efficient agent; an agent perly known in this country. An agent known the name given to him by Mr. Hastings, who the princes of the East give titles; he calls an incomparable agent; and by that name is very well known to your Lordships, and world. This agent, Major Scott, who, I be-e, was here prior to the time of Major Fair-

fax's arrival, in the character of an agent, and for the very same purposes, was called before the Committee, and examined point by point, article by article, upon all that obscure enumeration of bribes, which the Court of Directors declare they did not understand; but he declared, that he could speak nothing with regard to any of these transactions, and that he had got no instructions to explain any part of them. There was but one circumstance, which in the course of his examination we drew from him, namely, that one of these articles, entered in the account of the 22d of May, as a deposit, had been received from Mr. Hastings as a bribe from Cheit Sing: he produced an extract of a letter relative to it, which your Lordships in the course of this trial may see, and which will lead us into a further and more minute inquiry on that head; but when that Committee made their report in 1783, not one single article had been explained to Parliament, not one explained to the Company, except this bribe of Cheit Sing, which Mr. Hastings had never thought proper to communicate to the East India Company, either by himself, nor, as far as we could find out, by his agent; nor was it at last otherwise discovered, than as it was drawn out from him by a long examination in the Committee of the House of Commons. And thus, notwithstanding the letters he had written,

written, and the agents he employed, he seemed absolutely and firmly resolved to give his employers no satisfaction at all. What is curious in this proceeding is, that Mr. Hastings, all the time he conceals, endeavours to get himself the credit of a discovery. Your Lordships have seen what his discovery is; but Mr. Hastings, among his other very extraordinary acquisitions, has found an effectual method of concealment through discovery. I will venture to say, that whatever suspicions there might have been of Mr. Hastings's bribes, there was more effectual concealment in regard to every circumstance respecting them in that discovery, than if he had kept a total silence. Other means of discovery might have been found, but this standing in the way, prevented the employment of those means.

Things continued in this state, till the time of the letter from Cheltenham: the Cheltenham letter declared, that Mr. Hastings knew nothing of the matter: that he had brought with him no accounts, to England, upon the subject; and though it appears by this very letter, that he had with him at Cheltenham (if he wrote the letter at Cheltenham) a great deal of his other correspondence: that he had his letter of the 22d of May with him, yet any account, that could elucidate that letter, he declared that he

had not: but he hinted, that a Mr. Larkins in India, whom your Lordships will be better acquainted with, was perfectly apprised of all that transaction. Your Lordships will observe, that Mr. Hastings has all his faculties, some way or other, in deposit; one person can speak to his motives; another knows his fortune better than himself; to others he commits the sentimental parts of his defence; to Mr. Larkins he commits his memory. We shall see what a trustee of memory Mr. Larkins is, and how far he answers the purpose, which might be expected when appealed to by a man, who has no memory himself, or who has left it on the other side of the water; and who leaves it to another to explain for him accounts, which he ought to have kept himself, and circumstances, which ought to be deposited in his own memory.

This Cheltenham letter, I believe, originally became known, as far as I can recollect, to the House of Commons, upon a motion of Mr. Hastings's own agent: I do not like to be positive upon that point; but, I think, that was the first appearance of it. It appeared likewise in publick; for, it was thought so extraordinary and laborious a performance, by the writer, or his friends, as indeed it is; that it might serve to open a new source of eloquence in the kingdom; and, consequently, was printed, I believe,

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at the desire of the parties themselves. But however it became known, it raised an extreme curiosity in the publick to hear, when Mr. Hastings could say nothing, after so many years, of his own concerns and his own affairs, what satisfaction Mr. Larkins, at last, would give concerning them. This letter was directed to Mr. Devaynes, chairman of the Court of Directors. It does not appear, that the Court of Directors wrote any thing to India in consequence of it, or that they directed this satisfactory account of the business should be given them; but some private communications passed been Mr. Hastings, or his agents, and Mr. Larkins. There was a general expectation upon this occasion, I believe, in the House of Commons, and in the nation at large, to know what would become of the portentous inquiry. Mr. Hastings has always contrived to have half the globe between question and answer; when he was in India, the question went to him, and then he adjourned his answer till he came to England; and, when he came to England, it was necessary his answer should arrive from India; so that there is no manner of doubt, that all time was given for digesting, comparing, collating and making up a perfect memory upon the occasion. But, my Lords, Mr. Larkins, who has in custody Mr. Hastings's memory, no

small part of his conscience, and all his accounts, did, at last, in compliance with Mr. Hastings's desire, think proper to send an account. Then, at last, we may expect light. Where are we to look for accounts but from an accountant general? where are they to be met with, unless from him? and, accordingly, in that night of perplexity, into which Mr. Hastings's correspondence had plunged them, men looked up to the dawning of the day, which was to follow that star; the little Lucifer, which, with his lamp, was to dispel the shades of night, and give us some sort of light into this dark mysterious transaction. At last, the little lamp appeared, and was laid on the table of the House of Commons, on the motion of Mr. Hastings's friend; for we did not know of its arrival. It arrives, with all the intelligence, all the memory, accuracy, and clearness, which Mr. Larkins can furnish for Mr. Hastings, upon a business, that, before, was nothing but mystery and confusion. The account is called, "Copy of the particulars "of the Dates, on which the component parts "of sundry sums included in the account of "Sums received on the account of the Honour-"able Company by the Governour General, or "paid to their Treasury by his order, and ap-"plied to their Service, when received for Mr. "Hastings, and paid to Sub-treasurer." The

letter

letter from Mr. Larkins consisted of two parts; first, what was so much wanted, an account; next, what was wanted most of all to such an account as he sent, a comment and explanation. The account consisted of two members; one gave an account of several detached bribes, that Mr. Hastings had received within the course of about a year and a half; and, the other, of a great bribe, which he had received in one gross sum of 100,000*l.* from the Nabob of Oude. It appeared to us, upon looking into these accounts, that there was some geography, a little bad chronology, but nothing else in the first; neither the persons, who took the money, nor the persons, from whom it was taken, nor the ends, for which it was given, nor any other circumstances, are mentioned.

The first thing we saw was *Dinajepore*. I believe you know this piece of geography, that it is one of the provinces of the kingdom of Bengal. We then have a long series of months, with a number of sums added to them; and, in the end, it is said, that on the 18th and 19th of Assin, meaning part of September and part of October, were paid to Mr. Crofts, two lack of rupees; and then remains one lack, which was taken from a sum of three lack six thousand nine hundred and seventy-three rupees.

After we had waited for Mr. Hastings's own

account; after it had been pursued through a series of correspondence in vain; after his agents had come to England to explain it, this is the explanation, that your Lordships have got of this first article, Dinajepore; not the person paid to, not the person paying, are mentioned, nor any other circumstance, except the signature, *G. G. S.*; this might serve for *George Gilbert Sanders*, or any other name you please: and seeing *Crofts* above it, you might imagine it was an Englishman: and this, which I call a geographical and a chronological account, is the only account we have. Mr. Larkins, upon the mere face of the account, sadly disappoints us; and I will venture to say, that in matters of account Bengal book-keeping is as remote from good book-keeping, as the Bengal *Painches* are remote from all the rules of good composition.

We have however got some light; namely, that one G. G. S. has paid some money to Mr. Crofts for some purpose; but, from whom, we know not, nor where: that there is a place called Dinajepore, and that Mr. Hastings received some money from somebody in Dinajepore.

The next article is *Patna*. Your Lordships are not so ill acquainted with the geography of India, as not to know, that there is such a place

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as *Patna*, nor so ill acquainted with the chronology of it, as not to know, that there are three months called, Bysack, Assin, Cheyt. Here was paid to Mr. Crofts two lack of rupees, and there was left a balance of about two more.

But, though you learn, with regard to the province of Dinajepore, that there is a balance to be discharged by G. G. S.; yet, with regard to Patna, we have not even a G. G. S.; we have no sort of light whatever to know through whose hands the money passed, nor any glimpse of light whatever respecting it. You may expect to be made amends in the other province, called *Nuddea*, where Mr. Hastings had received a considerable sum of money: there is the very same darkness; not a word from whom received, by whom received, or any other circumstance, but that it was paid into the hands of Mr. Hastings's *white Banyan*, as he was commonly called in that country, into the hands of Mr. Crofts, who is his white agent in receiving bribes; for he was very far from having but one.

After all this inquiry, after so many severe animadversions from the House of Commons, after all those reiterated letters from the Directors, after an application to Mr. Hastings *himself*, when you are hunting to get at some explanation of the proceedings mentioned

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in the letter of the month of May 1782, you receive here, by Mr. Larkins's letter, which is dated the 5th of August 1786, this account; which, to be sure, gives an amazing light into this business: it is a letter, for which it was worth sending to Bengal, worth waiting for with all that anxious expectation, with which men wait for great events. Upon the face of the account there is not one single word, which can tend to illustrate the matter: He sums up the whole, and makes out, that there was received five lack and 50,000 rupees; that is to say, 55,000*l.* out of the sum of nine lack and 50,000 engaged to be paid—namely,

From Dinajepore - -	4,00,000
From Nuddea - - -	1,50,000
And from Patna - - -	4,00,000
	9,50,000
Or	£. 95,000

Now you have got full light! *Cabooleat* signifies a contract, or an agreement; and this agreement was to pay Mr. Hastings, as one should think, certain sums of money; it does not say from whom, but only that such a sum of money was paid, and that there remains such a balance. When you come and compare the money received by Mr. Crofts with these ca-

booleats,

booleats, you find that the cabooleats amount to 95,000*l.* and that the receipt has been about 55,000*l.* and that upon the face of this account, there is 40,000*l.* somewhere or other unaccounted for. There never was such a mode of account keeping, except in the new system of this bribe exchequer.

Your Lordships will now see, from this luminous, satisfactory, and clear account, which could come from no other than a great accountant and a great financier, establishing some new system of finance, and recommending it to the world as superiour to those old-fashioned foolish establishments, the Exchequer and Bank of England, what lights are received from Mr. Hastings.

However, it does so happen, that from these obscure hints we have been able to institute examinations, which have discovered such a mass of fraud, guilt, corruption, and oppression, as probably never before existed since the beginning of the world: and in that darkness, we hope and trust, the diligence and zeal of the House of Commons will find light sufficient to make a full discovery of his base crimes. We hope and trust, that after all his concealments, and, though he appear resolved to die in the last dyke of prevarication, all his artifices will not be able to secure him from the siege, which

the

the diligence of the House of Commons has laid to his corruptions.

Your Lordships will remark in a paragraph, which though it stands last, is the first in principle, in Mr. Larkins's letter, that, having before given his comment, he perorates, as is natural, upon such an occasion. This peroration, as is usual in perorations, is in favour of the parties speaking it, and *ad conciliandum auditorem.* "Conscious, (he says) that the concern, which I have had in these transactions, needs neither an apology nor an excuse;—that is rather extraordinary too!—and that I have in no action of my life sacrificed the duty and fidelity, which I owed to my honourable employers, either to the regard, which I felt for another, or to the advancement of my own fortune, I shall conclude this address, firmly relying upon the candour of those, before whom it may be submitted, for its being deemed a satisfactory as well as a circumstantial compliance with the requisition, in conformity to which the information it affords has been furnished;" meaning, as your Lordships will see in the whole course of the letter, that he had written it in compliance with the requisition, and in conformity to the information he had been furnished with by Mr. Hastings;—"without which it would have been as

"base

" base as dishonourable for me spontaneously " to have afforded it; for though the duty, " which every man owes to himself, should " render him incapable of making an assertion " not strictly true, no man, actuated either by " virtuous or honourable sentiments, could " mistakenly apprehend, that unless he be- " trayed the confidence reposed in him by " another, he might be deemed deficient in " fidelity to his employers."

My Lords, here is, in my opinion, a discovery very well worthy your Lordships attention; here is the Accountant General of the Company, who declares, and fixes it, as a point of honour, that he would not have made a discovery so important to them, if Mr. Hastings himself had not authorized him to make it: a point to which he considers himself bound, by his honour, to adhere. Let us see, what becomes of us, when the principle of honour is so debauched and perverted. A principle of honour, as long as it is connected with virtue, adds no small efficacy to its operation, and no small brilliancy and lustre to its appearance; but honour, the moment, that it becomes unconnected with the duties of official function, with the relations of life, and the eternal and immutable rules of morality, and appears in its substance alien to them, changes its nature, and instead of justifying

fying a breach of duty, aggravates all its mischiefs to an almost infinite degree; by the apparent lustre of the surface, it hides from you the baseness and deformity of the ground: here is Mr. Hastings's agent, Mr. Larkins, the Company's General Accountant, prefers his attachment to Mr. Hastings to his duty to the Company. Instead of the account, which he ought to give to them, in consequence of the trust reposed in him, he thinks himself bound by honour to Mr. Hastings, if Mr. Hastings had not called for that explanation, not to have given it; so that whatever obscurity is in this explanation, it is because Mr. Hastings did not authorize or require him to give a clearer: Here is a principle of treacherous fidelity; of perfidious honour; of the faith of conspirators against their masters; the faith of robbers against the publick, held up, against the duty of an officer in a publick situation. You see, how they are bound to one another, and how they give their fidelity to keep the secrets of one another, to prevent the Directors having a true knowledge of their affairs; and, I am sure, if you do not destroy this honour of conspirators, and this faith of robbers, that there will be no other honour and no other fidelity among the servants in India. Mr. Larkins, your Lordships see, adheres to the principle of secrecy; you will next remark, that Mr. Hastings had

had as many bribe-factors as bribes; there was confidence to be reposed in each of them, and not one of these men appears to be in the confidence of another. You will find, in this letter, the policy, the frame, and constitution of this new exchequer. Mr. Crofts seems to have known things, which Mr. Larkins did not: Mr. Larkins knew things, which Gunga Govin Sing did not. Gunga Govin Sing knew things, which none of the rest of the confederates knew. Cantoo Baboo, who appears in this letter as a principal actor, was in a secret, which Mr. Larkins did not know. It appears, likewise, that there was a Persian moonshee in a secret, of which Cantoo Baboo was ignorant; and it appears, that Mr. Palmer was in the secret of a transaction, not entrusted to any of the rest. Such is the labyrinth of this practical *painche*, or screw, that if, for instance, you were endeavouring to trace backwards some transaction through Major Palmer, you would be stopped there: and must go back again, for it had begun with Cantoo Baboo. If in another you were to penetrate into the dark recess of the black breast of Cantoo Baboo, you could not go further; for it began with Gunga Govin Sing. If you pierce the breast of Gunga Govin Sing, you are again stopped; a Persian moonshee was the confidential agent. If you get beyond this, you find Mr. Larkins knew

knew something, which the others did not; and at last, you find, Mr. Hastings did not put entire confidence in any of them. You will see, by this letter, that he kept his accounts in all colours, black, white and mezzotinto: that he kept them in all languages; in Persian, in Bengallee, and in a language, which, I believe, is neither Persian, nor Bengallee, nor any other known in the world; but a language, in which Mr. Hastings found it proper to keep his accounts and to transact his business. The persons carrying on the accounts are, Mr. Larkins, an Englishman; Cantoo Baboo, a Gentoo, and a Persian moonshee, probably a Mahometan. So all languages; all religions; all descriptions of men, are to keep the account of these bribes, and to make out this valuable account, which Mr. Larkins gave you!

Let us now see, how far the memory, observation, and knowledge of the persons referred to, can supply the want of them in Mr. Hastings. These accounts come at last, though late, from Mr. Larkins, who I will venture to say, let the Banyans boast what they will, has skill perhaps equal to the best of them: he begins by explaining to you something concerning the present of the ten lack. I wish your Lordships always to take Mr. Hastings's word, where it can be had, or Mr. Larkins's, who was the representative

sentative of, and memory keeper to, Mr. Hastings; and, then, I may perhaps take the liberty of making some observations upon it.—" Extract of a letter from William Larkins, Accountant General of Bengal, to the Chairman " of the East India Company, dated 5th August " 1786. Mr. Hastings returned from Benares " to Calcutta on the 5th February 1782: at " that time wholly ignorant of the letter, which " on the 20th January he wrote from Patna, " to the Secret Committee of the honourable " the Court of Directors: The rough draft of " this letter, in the hand-writing of Major " Palmer, is now in my possession. Soon after " his arrival at the Presidency, he requested me " to form the account of his receipts and dis- " bursements, which you will find journalised " in the 280th, &c. and 307th pages of the Ho- " nourable Company's general books of the " year 1781-2. My official situation as Ac- " countant General, had previously convinced " me, that Mr. Hastings could not have made " the issues, which were acknowledged as re- " ceived from him, by some of the paymasters " of the army, unless he had obtained some such " supply, as that, which he afterwards, viz. on " the 22d May 1782, made known to me, when " I immediately suggested to him the necessity " of his transmitting that account, which ac-

" companied his letter of that date, till when " the promise contained in his letter of 30th Ja- " nuary had entirely escaped his recollection."

The first thing I would remark on this, and I believe your Lordships have rather gone before me in the remark, is, that Mr. Hastings came down to Calcutta on the 5th of February, that then, or a few days after, he calls to him his confidential and faithful friend (not his official secretary, for he trusted none of his regular secretaries with these transactions,) he calls him to help him to make out his accounts during his absence. You would imagine, that at that time, he trusted this man with his account: no such thing; he goes on with the Accountant General, accounting with him for money expended, without ever explaining to that Accountant General how that money came into his hands. Here, then, we have the accountant making out the account, and the person accounting; the accountant does not in any manner make an objection, and say, Here you are giving me an account, by which it appears, that you have expended money, but you have not told me, where you received it: how shall I make out a fair account of debtor and creditor, between you and the Company? He does no such thing. There lies a suspicion in his breast, that Mr. Hastings must have taken some money, in some irregular

smuggler way, or he could not have made those payments. Mr. Larkins begins to suspect him. "Where did you lose this book-in?" (said one lady to another upon a certain occasion:) "Pray, madam, where did you find it?" Mr. Hastings, at the very moment of his life when confidence was required, even when making up his accounts with his accountant, never told him one word of the matter. You see he had no confidence in Mr. Larkins; this makes out one of the propositions I want to impress upon your Lordships minds, that no one man did he let into every part of his transactions; a material circumstance, which will help to lead your Lordships judgment in forming your opinion upon many parts of this cause.

You see, that Mr. Larkins suspected him; probably in consequence of those suspicions, or from some other cause, he at last told him upon the 22d of May 1782; (but why at that time, rather than at any other time, does not appear; and this we shall find very difficult to be accounted for) he told him, that he had received a bribe from the Nabob of Oude, of 100,000*l.*; he informs him of this on the 22d of May, which, when the accounts were making up, he conceals from him: and he communicates to him the rough draughts of his letter to the Court of Directors, informing them, that this business

was not transacted by any known secretary of the Company, nor with the intervention of any interpreter of the Company; nor passed through any official channel whatever, but through a gentleman much in his confidence, his military secretary; and, as if receiving bribes, and receiving letters concerning them, and carrying on correspondence relative to them, was a part of military duty; the rough draught of this letter was in the hands of this military secretary. Upon the communication of the letter, it rushes all at once into the mind of Mr. Larkins, who knows Mr. Hastings's recollection; who knows what does, and what does not escape it, and who had a memory ready to explode at Mr. Hastings's desire: "Good God! (says he) you have promised the Directors an account of this business!" a promise, which Mr. Larkins assures the Directors, upon his word, had entirely escaped Mr. Hastings's recollection. Mr. Hastings it seems had totally forgotten the promise relative to the paltry sum of 100,000*l.* which he had made to the Court of Directors in the January before; he never once thought of it; no, not even when he was making up his accounts of that very identical sum, till the 22d of May. So that these persons answer for another's bad memory, and you will see they have good reason. Mr. Hastings's want of recollection

collection appears in things of some moment. However lightly he may regard the sum of 100,000*l.* which, considering the enormous sums he has received, I dare say he does; for he totally forgot it; he knew nothing about it; observe what sort of memory this registrar and accountant of such sums as 100,000*l.* has. In what confusion of millions must it be, that such sums can be lost to Mr. Hastings's recollection! however, at last it was brought to his recollection, and he thought that it was necessary to give some account of it. And who is the accountant, whom he produces? His own memory is no accountant. He had dismissed the matter (as he happily expresses it in the Cheltenham letter) from his memory. Major Palmer is not the accountant. One is astonished that a man, who had had 100,000*l.* in his hands, and laid it out as he pretends in the publick service, has not a scrap of paper to shew for it. No ordinary or extraordinary account is given of it. Well, what is to be done in such circumstances? He sends for a person, whose name you have heard and will often hear of, the faithful Cantoo Baboo. This man comes to Mr. Larkins, and he reads to him (be so good as to remark the words) from a Bengal paper, the account of the detached bribes. Your Lordships will observe, that I have stated the receipt of

a number of detached bribes; and a bribe in one great body. One, the great corps d'armée; the other, flying scouting bodies, which were only to be collected together by a skilful man, who knew how to manage them, and regulate the motions of those wild and disorderly troops. When No. 2 was to be explained, Cantoo Baboo failed him; he was not worth a farthing as to any transaction, that happened when Mr. Hastings was in the Upper Provinces; where, though he was his faithful and constant attendant through the whole, yet he could give no account of it. Mr. Hastings's moonshee then reads three lines from a paper to Mr. Larkins. Now, it is no way even insinuated, that both the Bengal and Persian papers did not contain the account of other immense sums; and indeed, from the circumstance of only three lines being read from the Persian paper, your Lordships will be able in your own minds, to form some judgment upon this business.

I shall now proceed with his letter of explanation. "The particulars" he goes on to say, "of the paper No. 1, were read to me from "a Bengal paper, by Mr. Hastings's banyan, "Cantoo Baboo: and if I am not mistaken, the "three first lines of that No. 2, were read over "to me, from a Persian paper, by his moon-"shee. The translation of these particulars,

"made

" made by me, was, as I verily believe, the
" first complete memorandum that he ever
" possessed of them in the English language;
" and I am confident, that if I had not sug-
" gested to him the necessity of his taking this
" precaution, he would, at this moment, have
" been unable to have afforded any such in-
" formation concerning them."

Now, my Lords, if he had not got, on the intimation of Mr. Larkins, some scraps of paper, your Lordships might have, at this day, wanted that valuable information, which Mr. Larkins has laid before you. These however contain, Mr. Larkins says, "the first complete"—what? —account, do you imagine? no, "the first complete *memorandum*." You would imagine, that he would himself, for his own use, have notched down somewhere or other, in short-hand, in Persian characters, short without vowels, or in some other way, *memorandums*: but he had not himself even a memorandum of this business; and, consequently, when he was at Cheltenham, and even here at your bar, he could never have had any account of a sum of 200,000*l.* but, by this account of Mr. Larkins, taken, as people read them, from detached pieces of paper.

One would have expected that Mr. L ki being warned that day, and cautioned strange memory of Mr. Hastings, and tl

gerous situation, therefore, in which he himself stood, would, at least, have been very guarded and cautious: Hear what he next says upon this subject. "As neither of the other sums "passed through his hands, these (meaning the "scraps) contained no such specification, and, "consequently, could not enable him to afford "the information, with which he has requested "me to furnish you: and it is more than pro- "bable, that if the affidavits, which I took on "the 16th December 1782, had not exposed "my character to the suspicion of my being "capable of committing one of the basest "trespasses upon the confidence of mankind, "I should, at this distance of time, have been "equally unable to have complied with this "request: but, after I became acquainted with "the insinuation suggested in the Eleventh "Report of the Select Committee of the House "Commons, I thought it but too probable, that "unless I was possessed of the original memo- "randum, which I had made of these trans- "actions, I might not at some distant period "be able to prove, that I had not descended to "commit so base an action. I have, therefore, "always most carefully preserved every paper, "which I possessed regarding these trans- "actions."

You see, that Mr. Hastings had no memo-

randums

randums of his accounts; you see, that after Mr. Larkins had made his memorandums of them, he had no design of guarding or keeping them; and you will commend those wicked and malicious committees, who, by their reports, have told an Accountant General and first publick officer of revenue, that, in order to guard his character from their suspicions, it was necessary that he should keep some paper or other of an account. We have heard of the base, wicked, and mercenary licence, that has been used by these gentlemen of India towards the House of Commons; a licence to libel and traduce the diligence of the House of Commons, the purity of their motives, and the fidelity of their actions, by which the very means of informing the people are attempted to be used for the purpose of leaving them in darkness and delusion. But, my Lords, when the Accountant General declares, that, if the House of Commons had not expressed, as they ought to express, much diffidence, and distrust, respecting these transactions, and even suspected him of perjury, this very day that man would not have produced a scrap of those papers to you, but might have turned them to the basest and most infamous of uses. If, I say, we have saved these valuable fragments by suspecting his integrity, your Lordships will see, suspicion is of some use;

and

and I hope the world will learn, that punishment will be of use too, in preventing such transactions.

Your Lordships have seen that no two persons know any thing of these transactions: you see, that even memorandums of transactions of very great moment, some of which had passed in the year 1779, were not even so much as put in the shape of complete memoranda, until May 1782: you see, that Mr. Hastings never kept them: and there is no reason to imagine that a black banyan and a Persian moonshee would have been careful of what Mr. Hastings himself, who did not seem to stimulate his accountants to a vast deal of exactness and a vast deal of fidelity, was negligent. You see, that Mr. Larkins, our last, our only hope, if he had not been suspected by the House of Commons, probably would never have kept these papers; and that you could not have had this valuable cargo, such as it is, if it had not been for the circumstance Mr. Larkins thinks proper to mention.

From the specimen, which we have given of Mr. Hastings's mode of accounts, of its vouchers, checks, and counter-checks, your Lordships will have observed, that the mode itself is past describing; and that the checks, and counter-checks, instead of being put upon one another to prevent abuse, are put upon each other to

prevent

prevent discovery, and to fortify abuse? When you hear that one man has an account of receipt, another of expenditure, another of controul, you say, that office is well constituted: but, here is an office constituted by different persons, without the smallest connection with each other; for the only purpose, which they have ever answered, is the purpose of base concealment.

We shall now proceed a little further with Mr. Larkins. The first of the papers, from which he took the memoranda, was a paper of Cantoo Baboo; it contained detached payments, amounting in the whole, with the cabooleat, or agreement, to about 95,000*l.* sterling, and of which, it appears that there was received by Mr. Crofts 55,000*l.* and no more.

Now will your Lordships be so good as to let it rest in your memory, what sort of an exchequer this is, even with regard to its receipts. As your Lordships have seen the economy and constitution of this office; so now see the receipt. It appears, that in the month of May 1782, out of the sums beginning to be received in the month of Shamar, that is, in July 1779, there was, during that interval, 40,000*l.* out of 95,000*l.* sunk somewhere, in some of the turnings over upon the gridiron, through some of those agents and panders of corruption, which Mr. Hastings uses. Here is the *valuable* re-

venue

venue of the Company, which is to *supply them in their exigencies, which is to come from sources, which otherwise never would have yielded it*; which, though small in proportion to the other revenue, yet is a diamond, something that by its value makes amends for its want of bulk; falling short by 40,000*l.* out of 95,000*l.* Here is a system made for fraud, and producing all the effects of it.

Upon the face of this account, the agreement was to yield to Mr. Hastings, some way or other to be paid to Mr. Crofts, 95,000*l.* and there was a deficiency of 40,000*l.* Would any man, even with no more sense than Mr. Hastings, who wants all the faculties of the human mind, who has neither memory nor judgment; any man, who was that poor half-idiot creature, that Mr. Hastings pretends to be, engage in a dealing, that was to extort from some one or other an agreement to pay 95,000*l.* which was not to produce more than 55,000*l.*? What, then, is become of it? Is it in the hands of Mr. Hastings's wicked bribe-brokers, or in his own hands? is it in arrear? do you know any thing about it? whom are you to apply to for information? why to G. G. S. G. G. S. I find to be, what indeed I suspected him to be, a person, that I have mentioned frequently to your Lordships, and that you will often hear of, commonly called Gunga

Gunga Govin Sing, in a short word, the wickedest of the whole race of Banyans: the consolidated wickedness of the whole body is to be found in this man.

Of the deficiency, which appears in this agreement with somebody or other on the part of Mr. Hastings through Gunga Govin Sing, you will expect to hear some explanation. Of the first sum, which is said to have been paid through Gunga Govin Sing, amounting on the cabooleat to four lack, and of which no more than two lack was actually received; that is to say, half of it was sunk: we have this memorandum only, "Although Mr. Hastings was extremely dissatisfied with the excuses Gunga Govin Sing assigned for not paying Mr. Crofts the sums stated by the paper No. 1, to be in his charge, he never could obtain from him any further payments on this account." Mr. Hastings is exceedingly dissatisfied with those excuses, and this is the whole account of the transaction. This is the only thing said of Gunga Govin Sing, in the account; he neither states how he came to be employed, or for what he was employed. It appears however from the transaction, as far as we can make our way through this darkness, that he had actually received 10,000*l.* of the money; which he did not account for, and that he pretended that there

there was an arrear of the rest. So here Mr. Hastings's bribe-agent admits that he had received 10,000*l.* but he will not account for it; he says, There is an arrear of another 10,000*l.*; —and thus it appears that he was enabled to take from somebody at Dinajepore, by a caboolcat, 40,000*l.* of which Mr. Hastings can get but 20,000*l.*: there is cent per cent loss upon it. Mr. Hastings was so exceedingly dissatisfied with this conduct of Gunga Govin Sing, that you would imagine a breach would have immediately ensued between them. I shall not anticipate what some of my honourable friends will bring before your Lordships; but I tell you, that so far from quarrelling with Gunga Govin Sing, or being really angry with him, it is only a little pettish love quarrel with Gunga Govin Sing; *amantium iræ amoris integratio est.* For Gunga Govin Sing, without having paid him one shilling of this money, attended him to the Ganges: and one of the last acts of Mr. Hastings's government was to represent this man, who was unfaithful even to fraud, who did not keep the common faith of thieves and robbers; this very man he recommends to the Company as a person, who ought to be rewarded, as one of their best and most faithful servants: and how does he recommend him to be rewarded? By giving him the estate of another person; the

way,

way, in which Mr. Hastings desires to be always rewarded himself. For, in calling upon the Company's justice, to give him some money for expenses, with which he never charged them, he desires them to assign him the money upon some person of the country. So here Mr. Hastings recommends Gunga Govin Sing not only to trust, confidence, and employment, which he does very fully, but to a reward, taken out of the substance of other people. This is what Mr. Hastings has done with Gunga Govin Sing; and if such are the effects of his anger, what must be the effect of his pleasure and satisfaction? Now I say that Mr. Hastings, who, in fact, saw this man amongst the very last with whom he had any communication in India, could not have so recommended him after this known fraud, in one business only, of 30,000*l.*; he could not so have supported him; he could not so have caressed him; he could not so have employed him; he could not have done all this, unless he had paid to Mr. Hastings privately that sum of money, which never was brought into any, even of these miserable accounts: without some payment or other, with which Mr. Hastings was and ought to be satisfied, or unless Gunga Govin Sing had some dishonourable secret to tell of him, which he did not dare to provoke him to give a just account of;

of; or lastly, unless the original agreement was, that half or a third of the bribe should go to Gunga Govin Sing.

Such is this patriotick scheme of bribery, this publick-spirited corruption, which Mr. Hastings has invented upon this occasion, and by which, he thinks, out of the vices of mankind, to draw a better revenue than out of any legal source whatever; and, therefore, he has resolved to become the most corrupt of all governours general, in order to be the most useful servant to the finances of the Company.

So much as to the first article of Dinajepore peshcush. All you have is, that G. G. S. is Gunga Govin Sing: that he has cheated the publick of half of it; that Mr. Hastings was angry with him; and yet went away from Bengal, rewarding, praising, and caressing him. Are these things to pass as matters of course? They cannot so pass with your Lordships sagacity; I will venture to say, that no court, even of *pie-poûdre*, could help finding him guilty upon such a matter, if such a court had to inquire into it.

The next article is *Patna*. Here, too, he was to receive 40,000 *l.* but, from whom, this deponent saith not: At this circumstance, Mr. Larkins, who is a famous deponent, never hints once. You may look through his whole letter, which

which is a pretty long one, and which I will save your Lordships the trouble of hearing read at length now, because you will have it before you when you come to the Patna business; and you will only find, that somebody had engaged to pay him 40,000 *l.* and that but half of this sum was received. You want an explanation of this. You have seen the kind of explanation given in the former case, a conjectural explanation of G. G. S. But when you come to the present case, who the person paying was, why the money was not paid, what the cause of failure was; you are not told; you only learn that there was that sum deficient; and Mr. Larkins, who is our last resort, and final hope of elucidation in this transaction, throws not the smallest glimpse of light upon it. We, of the House of Commons, have been reduced to form the best legitimate conjectures we could upon this business, and those conjectures have led us to further evidence, which will enable us to fix one of the most scandalous and most mischievous bribes, in all the circumstances of it, upon Mr. Hastings, that was ever known. If he extorted 40,000 *l.* under pretence of the Company's service, here is again another failure of half the money. Oh, my Lords! you will find, that even the remaining part was purchased with the loss of one of the best revenues in India, and with the grievous

distress of a country, that deserved well your protection, instead of being robbed to give 20,000 *l.* to the Company, and another 20,000 *l.* to some robber, or other, black or white. When I say given to some other robber, black or white, I do not suppose that either generosity, friendship, or even communion can exist in that country between white men and black; no, their colours are not more adverse than their characters and tempers. There is not that *idem velle et idem nolle:* there are none of those habits of life, nothing, that can bind men together even in the most ordinary society: the mutual means of such an union do not exist between them. It is a money dealing, and a money dealing only, which can exist between them; and when you hear that a black man is favoured, and that 20,000 *l.* is pretended to be left in his hands, do not believe it: indeed, you cannot believe it; for we will bring evidence to show, that there is no friendship between these people: and that when black men give money to a white man, it is a bribe; and that when money is given to a black man, he is only a sharer with the white man in their infamous profits. We find, however, somebody anonymous, with 20,000 *l.* left in his hands; and when we come to discover who the man is, and the final balance, which appears against him in his account with the Company,

Company, we find, that for this 20,000*l.* which was received for the Company, they paid such a compound interest, as was never before paid for money advanced: The most violently griping usurer, in dealing with the most extravagant heir, never made such a bargain as Mr. Hastings has made for the Company by this bribe. Therefore, it could be nothing but fraud, that could have got him to have undertaken such a revenue. This evidently shows the whole to be a pretence to cover fraud, and not a weak attempt to raise a revenue; and that Mr. Hastings was not that idiot he represents himself to be, a man forgetting all his offices, all his duties, all his own affairs, and all the publick affairs. He does not, however, forget how to make a bargain to get money; but when the money is to be recovered for the Company, (as he says) he forgets to recover it; so that the accuracy with which he begins a bribe, *acribus initiis et soporosâ fine*, and the carelessness with which he ends it, are things, that characterize not weakness and stupidity, but fraud.

The next article we proceed to is *Nuddea*. Here, we have more light: But does Mr. Larkins anywhere tell you any thing about Nuddea? No; it appears as if the account had been paid up; and that the cabooleat, and the payments, answer and tally with each other: yet, when we

come to produce the evidence upon these parts, you will see most abundant reason to be assured, that there is much more concealed, than is given in this account: that it is an account current, and not an account closed; and that the agreement was for some other and greater sum than appears. It might be expected that the Company would inquire of Mr. Hastings, and ask, From whom did he get it,—who has received it,—who is to answer for it? But he knew that they were not likely to make any inquiry at all, they are not that kind of people. You would imagine that a mercantile body would have some of the mercantile excellencies, and even you would allow them perhaps some of the mercantile faults. But they have, like Mr. Hastings, forgotten totally the mercantile character; and, accordingly, neither accuracy, nor fidelity of account, do they ever require of Mr. Hastings. They have too much confidence in him; and he accordingly acts like a man, in whom such confidence, without reason, is reposed.

Your Lordships may perhaps suppose that the payment of this money was an act of friendship and generosity in the people of the country? No; we have found out, and shall prove, from whom he got it; at least we shall produce such a conjecture upon it, as your Lordships will think

think us bound to do, when we have such an account before us. Here on the face of the account there is no deficiency; but when we look into it, we find, skulking in a corner, a person called Nunduloll, from whom there is received 58,000 rupees. You will find that he, who appears to have paid up this money, and which Mr. Hastings spent as he pleased in his journey to Benares, and who, consequently, must have had some trust reposed in him, was the wickedest of men next to those I have mentioned; always giving the first rank to Gunga Govin Sing, *primus inter pares*, the second to Devi Sing, the third to Cantoo Baboo; this man is fit to be one next on a par with them. Mr. Larkins, when he comes to explain this article, says, "I believe, "it is for a part of the Dinajepore peshcush, "which would reduce the balance to about "5,000*l.*;" but he does not pretend to know, what it is given for; he gives several guesses at it; but, he says, "As I do not know, I shall "not pretend to give more than my conjecture "upon it." He is in the right, because we shall prove Nunduloll never did or had any thing to do with the Dinajepore peshcush. *These are very extraordinary proceedings. It is my business simply to state them to your Lordships now, (we will give them in afterwards in evidence)*

and I will leave that evidence to be confirmed and fortified by further observations.

One of the objects of Mr. Larkins's letter is to illustrate the bonds. He says, "The two "first stated sums," namely, Dinajepore and Patna, in the paper marked No. 1, I suppose, for he seems to explain it to be such, "are sums "for a part of which Mr. Hastings took two "bonds; viz. No. 1539, dated 1st October "1780, and No. 1540, dated 2d October 1780, "each for the sum of current rupees 1,16,000, "or sicca rupees one lack. The remainder of "that amount was carried to the credit of the "head, *Four per cent Remittance Loan*; Mr. "Hastings having taken a bond for it, (No. 89) "which has been since completely liquidated, "conformable to the law." But, before I proceed with the bonds, I will beg leave to recall to your Lordships recollection, that Mr. Larkins states in his letter, that these sums were received in November. How does this agree with another state of the transaction, given by Mr. Hastings; viz. that the time of his taking the bonds was the 1st and 2d of October? Mr. Larkins, therefore, who has thought proper to say, that the money was received in the month of November, has here given as extraordinary an instance either of fraudulent accuracy, or shameful official inaccuracy,

accuracy, as was ever perhaps discovered. The first sums are asserted to be paid to Mr. Crofts on the 18th and 19th of Assen 1187: the month of Assen corresponds with the month of September and part of October, and not with November; and it is the more extraordinary that Mr. Larkins should mistake this, because he is in an office which requires monthly payments, and, consequently, great monthly exactness, and a continual transfer from one month to another: we cannot suppose any accomptant in England can be more accurately acquainted with the succession of months, than Mr. Larkins must have been with the comparative state of Bengal and English months. How are we to account for this gross inaccuracy? If you have a poet, if you have a politician, if you have a moralist inaccurate, you know that these are cases, which, from the narrow bounds of our weak faculties, do not perhaps admit of accuracy. But, what is an inaccurate *accomptant* good for? "Silly man, that dost not know thy own silly trade!" was once well said: but the trade here is not silly. You do not even praise an accomptant for being accurate, because you have thousands of them; but you justly blame a public accomptant, who is guilty of a gross inaccuracy. But what end could his being inaccurate answer—why not name October as well as November? I know

no reason for it; but here is certainly a gross mistake; and, from the nature of the thing, it is hardly possible to suppose it to be a meer mistake. But, take it, that it is a mistake, and to have nothing of fraud, but mere carelessness; —this, in a man valued by Mr. Hastings for being very punctilious and accurate, is extraordinary.

But, to return to the bonds. We find a bond taken in the month of Sawun 1186 or 1779, but the receipt is said to be in Assen 1780: that is to say, there was a year and about three months between the collection and the receipt; and, during all that period of time, an enormous sum of money had lain in the hands of Gunga Govin Sing, to be employed, when Mr. Hastings should think fit. He employed it, he says, for the Mahratta expedition. Now, he began that letter on the 29th of November, by telling you, that the bribe would not have been taken from Cheit Sing, if it had not been at the instigation of an exigency, which it seems required a supply of money, to be procured lawfully, or unlawfully. But in fact there was no exigency for it, before the Berar army came upon the borders of the country; that army, which he invited by his careless conduct towards the Rajah of Berar, and whose hostility he was obliged to buy off by a sum of money: and yet this bribe was taken from

from Cheit Sing long before he had this occasion for it. The fund lay in Gunga Govin Sing's hands; and he afterwards applied to that purpose a part of this fund, which he must have taken without any view whatever to the Company's interest. This pretence of the exigency of the Company's affairs is the more extraordinary, because the first receipt of these monies was some time in the year 1779: (I have not got the exact date of the agreement) and it was but a year before that the Company was so far from being in distress, that he declared he should have, at very nearly the period, when this bribe became payable, a very large sum, (I do not recollect the precise amount) in their treasury. I cannot certainly tell when the cabooleat, or agreement, was made, yet I shall lay open something very extraordinary upon that subject, and will lead you, step by step, to the bloody scenes of Deby Sing. Whilst, therefore, Mr. Hastings was carrying on these transactions, he was carrying them on without any reference to the pretended object, to which he afterwards applied them. It was an old premeditated plan; and the money to be received could not have been designed for an exigency, because it was to be paid by monthly instalments. The case is the same with respect to the other cabooleats. It could not have been any momentary exigence, which he had to pro-

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vide for by these sums of money; they were paid regularly, period by period, as a constant uniform income to Mr. Hastings.

You find then Mr. Hastings first leaving this sum of money for a year and three months in the hands of Gunga Govin Sing; you find that when an exigence pressed him, by the Mahrattas suddenly invading Bengal, and he was obliged to refer to his bribe-fund, he finds that fund empty, and that in supplying money for this exigence, he takes a bond for two-thirds of his own money, and one-third of the Company's. For, as I stated before, Mr. Larkins proves of one of these accounts, that he took, in the month of January for this bribe-money, which, according to the principles he lays down, was the Company's money, three bonds as for money advanced from his own cash. Now this sum of three lacs, instead of being all his own, as it should appear to be in the month of January when he took the bonds; or two-thirds his own and one-third the Company's, as he said in his letter of the 29th of November; turns out by Mr. Larkins's account, paragragh 9, which I wish to mark to your Lordships, to be two-thirds the Company's money and one-third his own; and yet it is all confounded under bonds, as if the money had been his own. What can you say to this heroick sharper, disguised under

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the name of a patriot, when you find him to be nothing but a downright cheat, first taking money under the Company's name, then taking their securities to him for their own money, and afterwards entering a false account of them; contradicting that by another account; and God knows whether the third be true or false? These are not things, that I am to make out by any conclusion of mine; here they are, made out by himself and Mr. Larkins, and comparing them with his letter of the 27th, you find a gross fraud covered by a direct falsehood.

We have now done with Mr. Larkins's account of the bonds; and are come to the other species of Mr. Hastings's frauds, (for there is a great variety in them) and first to Cheit Sing's bribe. Mr. Larkins came to the knowledge of the bond-money through Gunga Govin Sing and through Cantoo Babbo: of this bribe he was not in the secret originally, but was afterwards made a confidant in it: it was carried to him; and the account he gives of it I will state to your Lordships. "The fourth sum stated in Mr. Hastings's account was the produce of sundry payments made to me by Sadamund, Cheyte Sing's bukey, who either brought or sent the gold mohurs to my house, from whence they were taken by me to Mr. Crofts, either on

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the same night or early in the morning after: they were made at different times, and I well remember that the same people never came twice. On the 21st June 1780, Mr. Hastings sent for me, and desired that I would take charge of a present, that had been offered to him by Cheyt Sing's buxey, under the plea of atoning for the opposition, which he had made towards the payment of the extra subsidy for defraying part of the expenses of the war; but really in the hope of its inducing Mr. Hastings to give up that claim; with which view the present had first been offered. Mr. Hastings declared, that although he would not take this for his own use, he would apply it to that of the Company, in removing Mr. Francis's objections to the want of a fund for defraying the extra expenses of Colonel Camac's detachment. On my return to the office, I wrote down the substance of what Mr. Hastings had said to me, and requested Mr. James Miller, my deputy, to seal it up with his own seal, and write upon it, that he had then done so at my request. He was no further informed of my motive for this, than merely that it contained the substance of a conversation, which had passed between me and another gentleman, which, in case that conversation should hereafter become the subject of inquiry, I wished to be able to

adduce

adduce the memorandum then made of it, in corroboration of my own testimony; and although that paper has remained unopened to this hour, and notwithstanding that I kept no memorandum whatever of the substance thereof, yet, as I have wrote this representation under the most scrupulous adherence to what I conceived to be truth, should it ever become necessary to refer to this paper, I am confident that it will not be found to differ materially from the substance of this representation."

I forgot to mention, that besides these two bonds, which Mr. Hastings declared to be the Company's, and one bond his own, that he slipped, into the place of the bond of his own, a much better; namely, a bond of November, which he never mentioned to the Company till the 22d of May; and this bond for current rupees one lack, seventy-four thousand, or sicca rupees 1,50,000, was taken for the payment stated in the paper No. 1, to have been made to Mr. Crofts on the 11th Augun 1187, which corresponds to the 23d of November 1780. This is the Nuddea money, and this is all that you know of it; you know that this money, for which he had taken this other bond from the Company, was not his own neither, but bribes taken from the other provinces.

I am ashamed to be troublesome to your Lordships

Lordships in this dry affair, but the detection of fraud requires a good deal of patience and assiduity, and we cannot wander into any thing, that can relieve the mind; if it was in my power to do it, I would do it. I wish however to call your Lordships attention to this last bribe, before I quit these bonds. Such is the confusion, so complicated, so intricate are these bribe accounts, that there is always something left behind, glean never so much from the paragraphs of Mr. Hastings and Mr. Larkins. I could not bring them to account, says Mr. Larkins. They were received before the 1st and 2d of October. Why does not the running treasury account give an account of them? The Committee of the House of Commons examined, whether the running treasury account had any such account of sums deposited: no such thing; they are said by Mr. Hastings to be deposited in June; they were not deposited in October, nor any account of them given till the January following. "These bonds (says he) I could not enter "them as regular money to be entered on the "Company's account, or in any publick way, "until I had had an order of the Governour "General and Council." But why had not you an order of the Governour General and Council? We are not calling on you, Mr. Larkins, for an account of your conduct: we are calling upon

upon Mr. Hastings for an account of his conduct, and which he refers to you to explain. Why did not Mr. Hastings order you to carry them to the publick account, "because (says he) "there was no other way." Every one, who knows any thing of a treasury or publick banking-place, knows, that if any person brings money as belonging to the publick, that the publick accomptant is bound, no doubt, to receive it, and enter it as such: "but (says "he) I could not do it until the account could "be settled, as between debtor and creditor: "I did not do it till I could put on one side "Durbar charges, secret service, to such an "amount; and balance that again with bonds "to Mr. Hastings:" that is, he could not make an entry regularly in the Company's books until Mr. Hastings had enabled him to commit one of the grossest frauds and violation of a publick trust, tha ever was committed, by ordering that money of the Company's to be considered as his own, and a bond to be taken as a security for it from the Company, as if it was his own.

But to proceed with
substance of Mr. Lar
The substance of this
was a bribe received
Cheit Sing, guarded

crecy, that it was not carried to the house of Mr. Crofts, who was to receive it finally, but to the house of Mr. Larkins, as a less suspected place; and that it was conveyed in various sums, no two people ever returning twice with the various payments, which made up that sum of 23,000*l.* or thereabouts. Now, do you want an instance of prevarication, and trickery in an account? If any person should inquire whether 23,000*l.* had been paid by Cheit Sing to Mr. Hastings, there was not any one man living, or any person concerned in the transaction, except Mr. Larkins, who received it, that could give an account of how much he received, or who brought it. As no two people are ever his confidants in the same transaction in Mr. Hastings's accounts, so here no two people are permitted to have any share whatever in bringing the several fragments, that make up this sum. This bribe, you might imagine, would have been entered by Mr. Larkins to some publick account, at least to the fraudulent account of Mr. Hastings. No such thing, it was never entered, till the November following. It was not entered, till Mr. Francis had left Calcutta. All these corrupt transactions were carried on privately by Mr. Hastings alone, without any signification to his colleagues of his carrying on this patriotick traffick, as he called it. Your Lordships will also

also consider both the person, who employs such a fraudulent Accomptant, and his ideas of his duty in his office. These are matters for your Lordships grave determination; but I appeal to you, upon the face of these accounts, whether you ever saw any thing so gross; and whether any man could be daring enough to attempt to impose upon the credulity of the weakest of mankind, much more to impose upon such a court as this, such accounts as these are.

If the Company had a mind to inquire what is become of all the debts due to them, and where is the cabooleat, he refers them to Gunga Govin Sing. Give us (say they) an account of this balance, that remains in your hands; I know (says he) of no balance. Why, is there not a cabooleat; where is it; what are the date and circumstances of it? There is no such cabooleat existing. This is the case even where you have the name of the person through whose hands the money passed. But suppose the inquiry went to the payments of the Patna cabooleat; Here (they say) we find half the money due; out of forty thousand pounds there is only twenty thousand received; give us some account of it. Who is to give an account of it? Here, there is no mention made of the name of the person, who had the cabooleat: whom can they call upon? Mr. Hastings does not re-

member; Mr. Larkins does not tell; they can learn nothing about it. If the Directors had a disposition, and were honest enough to the proprietors and the nation, to inquire into it; there is not a hint given, by either of those persons, who received the Nuddea, who received the Patna, who received the Dinajepore peshcush.

But, in what court can a suit be instituted, and against whom, for the recovery of this balance of 40,000 *l.* out of 95,000*l.*? I wish your Lordships to examine strictly this account, to examine strictly every part, both of the account itself, and Mr. Larkins's explanation: compare them together, and divine, if you can, what remedy the Company could have for their loss. Can your Lordships believe, that this can be any other than a systematical, deliberate fraud, grossly conducted? I will not allow Mr. Hastings to be the man, he represents himself to be; he was supposed to be a man of parts: I will only suppose him to be a man of mere common sense. Are these the accounts we should expect from such a man? And yet he and Mr. Larkins are to be magnified to heaven for great financiers; and this is to be called book-keeping. This is the Bengal account saved so miraculously on the 22d of May.

Next comes the Persian account. You have heard

heard of a present, to which it refers. It has been already stated, but it must be a good deal farther explained. Mr. Larkins states, that this account was taken from a paper, of which three lines, and only three lines, were read to him by a Persian moonshee; and it is not pretended, that this was the whole of it. The three lines read are as follows.—"From the Nabob (meaning the Nabob of Oude) to the Governour General, six lack, 60,000 *l.*: From Hussein Reza Khân and Hyder Beg Khân to ditto, three lack, 30,000 *l.*; and ditto to Mrs. Hastings, one lack, 10,000 *l.*"

Here, I say, are the three lines, that were read by a Persian moonshee. Is he a man, you can call to account for these particulars? No; he is an anonymous moonshee: his name is not so much as mentioned by Mr. Larkins, nor hinted at by Mr. Hastings; and you find these sums, which Mr. Hastings mentions, as a sum in gross given to himself, are not so. They were given by three persons; one six lacks, was given by the Nabob to the Governour: another of three lacks more by Hussein Reza Khân; and a third, one lack, by both of them clubbing, as a present to Mrs. Hastings. This is the first discovery, that appears, of Mrs. Hastings, having been concerned in receiving presents for the Governour General and others, in addition to

Gúnga Govin Sing, Cantoo Baboo, and Mr. Crofts. Now, if this money was not received for the Company, is it proper and right to take it from Mrs. Hastings? Is there honour and justice in taking from a lady a gratuitous present made to her? Yet Mr. Hastings says, he has applied it all to the Company's service. He has done ill, in suffering it to be received at all, if she has not justly and properly received it. Whether in fact she ever received this money at all, she not being upon the spot, as I can find, at the time, (though to be sure, a present might be sent her) I neither affirm nor deny, farther than that as Mr. Larkins says, there was a sum of 10,000*l.* from these ministers to Mrs. Hastings. Whether she ever received any other money than this, I also neither affirm nor deny. But, in whatever manner Mrs. Hastings received this, or any other money, I must say, in this grave place in which I stand, that if the wives of Governours General, the wives of Presidents of Council, the wives of the principal officers of the India Company, through all the various departments, can receive presents, there is an end of the covenants, there is an end of the Act of Parliament, there is an end to every power of restraint. Let a man be but married, and if his wife may take presents, that moment the Acts of Parliament, the covenants, and all the rest expire!

expire! There is something too in the manners of the East, that makes this a much more dangerous practice. The people of the East, it is well known, have their zenana, the apartment for their wives, as a sanctuary, which nobody can enter—a kind of holy of holies—a consecrated place, safe from the rage of war, safe from the fury of tyranny. The rapacity of man has here its bounds: here you shall come and no farther. But, if English ladies can go into these zenanas, and there receive presents, the natives of Hindostan cannot be said to have any thing left of their own. Every one knows, that in the wisest and best time of the commonwealth of Rome, towards the latter end of it; (I do not mean the best time for morals, but the best for its knowledge how to correct evil government, and to choose the proper means for it) it was an established rule, that no governour of a province should take his wife along with him into his province, wives not being subject to the laws in the same manner as their husbands: and though I do not impute to any one any criminality here; I should think myself guilty of a scandalous dereliction of my duty, if I did not mention the fact to your Lordships. But I press it no further: here are the accounts, delivered in by Mr. Larkins at Mr. Hastings's own requisition.

The three lines, which were read out of a Persian paper, are followed by a long account of the several species, in which this present was received, and converted by exchange, into one common standard. Now, as these three lines of paper, which are said to have been read out of a Persian paper, contain an account of bribes to the amount of 100,000*l.*; and as it is not even insinuated that this was the whole of the paper, but rather the contrary indirectly implied, I shall leave it for your Lordships, in your serious consideration to judge what mines of bribery that paper might contain. For why did not Mr. Larkins get the whole of that paper read and translated? The moment any man stops in the midst of an account, he is stopping in the midst of a fraud.

My Lords, I have one farther remark to make upon these accounts: The cabooleats, or agreements for the payments of these bribes, amount, in the three specified provinces, to 95,000*l.* Do you believe, that these provinces were thus particularly favoured? Do you think, that they were chosen as a little demesne for Mr. Hastings? That they were the only provinces honoured with his protection, so far as to take bribes from them? Do you perceive any thing in their local situation, that should distinguish them from other provinces of Bengal? What

is the reason why Dinajepore, Patna, Nuddea, should have the post of honour assigned them? What reason can be given for not taking bribes also from Burdwan, from Bishanpore, in short, from all the sixty-eight collections, which comprize the revenues of Bengal, and for selecting only three? How came he, I say, to be so wicked a servant, that, out of sixty-eight divisions, he chose only three to supply the exigencies of the Company? He did not do his duty in making this distinction, if he thought, that bribery was the best way of supplying the Company's treasury; and that it formed the most useful and effectual resource for them; which he has declared over and over again. Was it right to lay the whole weight of bribery, extortion and oppression, upon those three provinces, and neglect the rest? No; you know and must know, that he, who extorts from three provinces, will extort from twenty, if there are twenty. You have a standard, a measure of extortion, and that is all; *ex pede Herculem*: guess from thence what was extorted from all Bengal? Do you believe he could be so cruel to these provinces, so partial to the rest, as to charge them with that load, with 95,000*l.* knowing the heavy oppression they were sinking under, and leave all the rest untouched? You will judge of what is concealed from us by what we have dis-

covered through various means, that have occurred in consequence, both of the guilty conscience of the person, who confesses the fact with respect to these provinces, and of the vigour, perseverance and sagacity of those, who have forced from him that discovery. It is not therefore for me to say, that the 100,000*l.* and 95,000*l.* only were taken. Where the circumstances entitle me to go on, I must not be stopped, but at the boundary where human nature has fixed a barrier.

You have now before you the true reason why he did not choose that this affair should come before a court of justice. Rather than this exposure should be made, he to-day would call for the mountains to cover him: he would prefer an inquiry into the business of the three seals; into any thing foreign to the subject, I am now discussing, in order to keep you from the discovery of that gross bribery, that shameful peculation, that abandoned prostitution and corruption, which he has practised with indemnity and impunity to this day, from one end of India to the other.

At the head of the only account we have of these transactions stands Dinajepore; and it now only remains for me to make some observations upon Mr. Hastings's proceedings in that province. Its name, then, and that money was taken

taken from it, is all that appears; but from whom, by what hands, by what means, under what pretence it was taken, he has not told you; he has not told his employers. I believe, however, I can tell from whom it was taken: and I believe it will appear to your Lordships, that it must have been taken from the unhappy Rajah of Dinajepore; and I shall in a very few words state the circumstances attending and the service performed for it: from these you will be able to form a just opinion concerning this bribe.

Dinajepore, a large province, was possessed by an ancient family, the last of which, about the year 1184 of their æra, the Rajah Bijanaut had no legitimate issue. When he was at the point of death, he wished to exclude from the succession to the zemindary, his half brother, Cantoo Naut, with whom he had lived upon ill terms for many years, by adopting a son. Such an adoption, when a person has a half brother, as he had, in my poor judgment, is not countenanced by the Gentoo laws. But Gunga Govin Sing, who was placed by the office he held, at the head of the registry, where the records were kept, by which the rules of succession according to the custom of the country are ascertained, became master of these Gentoo laws; and through his means Mr. Hastings decreed in favour

favour of the adoption. We find, that immediately after this decree, Gunga Govin Sing received a cabooleat on Dinajepore for the sum of 40,000*l.* of which it appears, that he has actually exacted 30,000*l.* though he has paid to Mr. Hastings only 20,000*l.* We find, before the young Rajah had been in possession a year, his natural guardians and relations, on one pretence or another, all turned out of their offices. The peshcush, or fixed annual rent payable to the Company for his zemindary, fell into arrear, as might naturally be expected, from the Rajah's inability to pay both his rent and this exorbitant bribe, extorted from a ruined family. Instantly, under pretext of this arrearage, Gunga Govin Sing, and the fictitious committee, which Mr. Hastings had made for his wicked purposes, composed of Mr. Anderson, Mr. Shore, and Mr. Crofts, who were but the tools, as they tell us themselves, of Gunga Govin Sing, gave that monster of iniquity, Debi Sing, the government of this family. They put this noble infant, this miserable Rajah, together with the management of the provinces of Dinajepore and Rungpore, into his wicked and abominable hands; where the ravages he committed excited what was called a rebellion, that forced him to fly from the country, and into which I do not wonder he should be desirous that a political and not

a juridical

a juridical inquiry should be made. The savage barbarities, which were there perpetrated, I have already, in the execution of my duty, brought before this House and my country; and it will be seen, when we come to the proof, whether what I have asserted was the effect either of a deluded judgment or disordered imagination; and whether the facts, I state, cannot be substantiated by authentic reports, and were none of my invention: and, lastly, whether the means, that were taken to discredit them, do not infinitely aggravate the guilt of the offenders. Mr. Hastings wanted to fly from judicial inquiry; he wanted to put Debi Sing anywhere but in a court of justice. A court of justice, where a direct assertion is brought forward, and a direct proof applied to it, is an element in which he cannot live for a moment. He would seek refuge anywhere, even in the very sanctuary of his accusers, rather than abide a trial with him in a court of justice: but the House of Commons was too just not to send him to this tribunal, whose justice they cannot doubt, whose penetration he cannot elude, and whose decision will justify those managers, whose characters he attempted to defame.

But this is not all. We find, that after the cruel sale of this infant, who was properly and directly under the guardianship of the Company

pany (for the Company acts as steward and dewan of the province, which office has the guardianship of minors), after he had been robbed of 40,000*l.* by the hands of Gunga Govin Sing, and afterwards, under pretence of his being in debt to the Company, delivered into the hands of that monster, Debi Sing, Mr. Hastings, by way of anticipation of these charges, and in answer to them, has thought proper to produce the certificate from this unfortunate boy, which I will now again read to you:—

"I Radanaut, zemindar of Purgunnah Ha-
"veley, Penjuna, &c. commonly called Dina-
"jepore:—As it has been learnt by me, the
"Muttesudies, and the respectable officers of
"my zemindary, that the ministers of England
"are displeased with the late Governour, Warren
"Hastings, Esq. upon the suspicion that he op-
"pressed us, took money from us by deceit and
"force, and ruined the country; therefore we,
"upon the strength of our religion, which we
"think it incumbent on and necessary for us to
"abide by, following the rules laid down in
"giving evidence, declare the particulars of the
"acts and deeds of Warren Hastings, Esq. full
"of circumspection and caution, civility and
"justice, superiour to the caution of the most
"learned; and by representing what is fact,

"wipe

" wipe away the doubts, that have possessed the " minds of the ministers of England: That " Mr. Hastings is possessed of fidelity and con- " fidence, and yielding protection to us; that " he is clear of the contamination of mistrust " and wrong, and his mind is free of covetous- " ness or avarice. During the time of his ad- " ministration no one saw other conduct than " that of protection to the husbandmen and " justice; no inhabitant ever experienced af- " flictions, no one ever felt oppression from " him; our reputations have always been " guarded from attacks by his prudence, and " our families have always been protected by his " justice. He never omitted the smallest in- " stance of kindness towards us, but healed the " wounds of despair with the salve of conso- " lation, by means of his benevolent and kind " behaviour, never permitting one of us to sink " in the pit of despondence. He supported " every one by his goodness; overset the de- " signs of evil-minded men by his authority; " tied the hands of oppression with the strong " bandage of justice, and by these means ex- " panded the pleasing appearance of happiness " and joy over us: he re-established justice and " impartiality. We were, during his govern- " ment, in the enjoyment of perfect happiness " and ease, and many of us are thankful and " satisfied.

" satisfied. As Mr. Hastings was well acquainted " with our Manners and Customs, he was always " desirous, in every respect, of doing whatever " would preserve our religious rights, and guard " them against every kind of accident and in- " jury; and at all times protected us. What- " ever we have experienced from him, and " whatever happened from him, we have written " without deceit or exaggeration."

My Lords, this Radanaut, zemindar of the Purgunnah, who, as your Lordships hear, bears evidence upon oath to all the great and good qualities of the governour, and particularly, to his absolute freedom from covetousness; this person, to whom Mr. Hastings appeals, was, as the Committee state, a boy between five and six years old at the time when he was given into the hands of Debi Sing; and when Mr. Hastings left Bengal, which was in 1786, was between eleven and twelve years old! This is the sort of testimony, that Mr. Hastings produces, to prove, that he was clear from all sort of extortion, oppression, and covetousness, in this very zemindary of Dinajepore. This boy, who is so observant, who is so penetrating, who is so accurate in his knowledge of the whole government of Mr. Hastings, was, I say, when he left his government, at the utmost, but eleven

eleven years and a half old. Now, to what an extremity is this unhappy man at your bar driven, when oppressed by this accumulative load of corruption charged upon him, and seeing his bribery, his prevarication, his fraudulent bonds brought before you, he gives the testimony of this child, who for the greatest part of his time lived 300 miles from the seat of Mr. Hastings's government. Consider the miserable situation of this poor unfortunate boy, made to swear, with all the solemnities of his religion, that Mr. Hastings was never guilty in his province of any act of rapacity. Such are the testimonies, which are there called rozannamas, in favour of Mr. Hastings, with which all India is said to sound. Do we attempt to conceal them from your Lordships? No, we bring them forth to show you the wickedness of the man, who, after he has robbed innocence, after he has divided the spoil between Gunga Govin Sing and himself, gets the party robbed to perjure himself for his sake, if such a creature is capable of being guilty of perjury. We have another rozannamma sent from Nuddea, by a person nearly under the same circumstances with Rhadanaut, namely, Maha Rajah Dheraja Scolbrund Bahadre, only made to differ in some expressions from the former, that it might not appear to originate from the same hand.

These

These miserable rozannammas he delivers to you as the collected voice of the country, to show how ill-founded the impressions are which Committees of the House of Commons (for to them they allude, I suppose) have taken concerning this man, during their inquiries into the management of the affairs of the Company in India.

Before I quit this subject, I have only to give you the opinion of Sir Elijah Impey, a name consecrated to respect for ever, (your Lordships know him in this house as well as I do) respecting these petitions and certificates of good behaviour:—

". From the reasons and sentiments, that they contain, &c.

[*This document cannot be found.*]

The moment an Englishman appears, as this gentleman does in the province of Dinajepore, to collect certificates for Mr. Hastings, it is a command for them, the people, to say what he pleases.

And here, my Lords, I would wish to say something

something of the miserable situation of the people of that country; but it is not in my commission, and I must be silent; and shall only request your Lordships to observe, how this crime of bribery grows in its magnitude. First, the bribe is taken, through Gunga Govin Sing, from this infant, for his succession to the zemindary. Next follows, the removal from their offices, and consequent ruin, of all his nearest natural relations. Then the delivery of the province to Debi Sing, upon the pretence of the arrears due to the Company, with all the subsequent horrours committed under the management of that atrocious villain. And lastly, the gross subornation of perjury in making this wretched minor, under twelve years of age, bear testimony, upon oath, to the good qualities of Mr. Hastings, and of his government; this minor, I say, who lived 300 miles from the seat of his government, and who, if he knew any thing at all of his own affairs, must have known that Mr. Hastings was the cause of all his sufferings.

My Lords, I have now gone through the whole of what I have in charge. I have laid before you the covenants, by which the Company have thought fit to guard against the avarice and rapacity of their governours. I have shown, that they positively forbid the taking of

g it. In all this I have only *opened* to you
e package of this business; I have opened it
ventilate it, and give air to it: I have opened
that a quarantine might be performed; that
e sweet air of heaven, which is polluted by
e poison it contains, might be let loose upon
and that it may be aired and ventilated before
ur Lordships touch it. Those, who follow
e, will endeavour to explain to your Lordships,
at Mr. Hastings has endeavoured to involve
mystery, by bringing proof after proof, that
ery bribe, that was here concealed, was taken
th corrupt purposes, and followed with the
st pernicious consequences. These are
ngs, which will be brought to you in proof.
have only regarded the system of bribery:
ave endeavoured to show, that it is a system
mystery and concealment; and, consequently,
ystem of fraud.

You now see some of the means, by which
unes have been made, by certain persons in
dia; you see, the confederacies they have
med with one another for their mutual con-
lment and mutual support; you will see, how
y reply to their owi deceitful inquiries by
dulent answers; y see, that Chel-
am calls upon Calc one deep calls
another; and that ch is made
ndation, is ans y: in
short,

short, you will see the very constitution of their minds here developed.

And, now my Lords, in what a situation are we all placed. This prosecution of the Commons (I wish to have it understood, and I am sure I shall not be disclaimed in it) is a prosecution not only for the punishing a delinquent, a prosecution not merely for preventing this and that offence, but it is a great censorial prosecution, for the purpose of preserving the manners, characters, and virtues, that characterize the people of England. The situation in which we stand is dreadful. These people pour in upon us every day. They not only bring with them the wealth, which they have acquired, but they bring with them into our country the vices by which is was acquired: formerly the people of England were censured, and, perhaps properly, with being a sullen, unsocial, cold, unpleasant race of men: and as inconstant as the climate in which they are born. These are the vices, which the enemies of the kingdom charged them with, and people are seldom charged with vices, of which they do not in some measure partake. But nobody refused them the character of being an open-hearted, candid, liberal, plain, sincere people; qualities, which would cancel a thousand faults, if they had them.

But if, by conniving at these frauds, you

once teach the people of England, a concealing, narrow, suspicious, guarded conduct: if you teach them qualities directly the contrary to those by which they have hitherto been distinguished: if you make them a nation of concealers, a nation of dissemblers, a nation of liars, a nation of forgers; my Lords, if you, in one word, turn them into a people of *Banyans*, the character of England, that character, which more than our arms and more than our commerce has made us a great nation, the character of England will be gone and lost.

Our liberty is as much in danger, as our honour and our national character. We, who here appear representing the Commons of England, are not wild enough, not to tremble both for ourselves and for our constituents, at the effect of riches: "*Opum metuenda potestas.*" We dread the operation of money. Do we not know, that there are many men, who wait and who indeed hardly wait the event of this prosecution to let loose all the corrupt wealth of India acquired by the oppression of that country for the corruption of all the liberties of this: and to fill the Parliament with men, who are now the object of its indignation.—To-day, the Commons of Great Britain prosecute the delinquents of India.—To-morrow the delinquents of India may be the Commons of Great Britain. We know,

I say, and feel the force of money; and we now call upon your Lordships for justice in this Cause of money. We call upon you for the preservation of our manners,—of our virtues. We call upon you for our national character. We call upon you for our liberties; and hope, that the freedom of the Commons will be preserved by the justice of the Lords.

*** In this article Mr. Burke was supported on the 16th of February 1790, by Mr. Anstruther, who opened the remaining part of the sixth article, and part of the seventh article, and the evidence was summed up and enforced by him.—The rest of the evidence upon the sixth, and on part of the seventh, eighth, and fourteenth articles, were respectively opened and enforced by Mr. Fox and other of the Managers, on the 7th and 9th of June, in the same session.

On the 23d May 1791, Mr. St. John opened the fourth article of charge; And evidence was heard in support of the same. In the following sessions of 1792, Mr. Hastings's counsel were heard in his defence, which was continued through the whole of the sessions of 1793.

On the 5th of March 1794, a Select Committee was appointed by the House of Commons to inspect the Lords Journals, in relation to their proceeding on the Trial of Warren Hastings, Esquire, and to report what they found therein to the House (which Committee were the Managers appointed to make good the Articles of Impeachment against the said Warren Hastings, Esquire); and who were afterwards instructed

to report the several matters which had occurred since the commencement of the prosecution, and which had, in their opinion, contributed to the duration thereof to that time, with their observations thereupon.—On the 30th of April, the following Report, written by Mr. Burke, and adopted by the Committee, was presented to the House of Commons, and ordered by the House to be printed.—EDIT.

REPORT, made on the 30th April 1794, from the COMMITTEE of the House of Commons, appointed to inspect the Lords Journals, in relation to their Proceeding on the Trial of WARREN HASTINGS, Esquire, and to report what they find therein to the House (which Committee were the Managers appointed to make good the Articles of Impeachment against the said WARREN HASTINGS, Esquire); and who were afterwards instructed to report the several Matters which have occurred since the commencement of the said Prosecution, and which have, in their Opinion, contributed to the duration thereof to the present time, with their Observations thereupon.

YOUR Committee has received two powers from the House—The first on the 5th of March 1794, to inspect the Lords Journals, in relation to their proceedings on the Trial of Warren Hastings, esquire, and to report what they find therein to the House. The second is an instruction given on the 17th day of the same month of March, to this effect: That your Committee do report to this House, the several matters which have occurred since the commencement of the said Prosecution, and which have, in their opinion, contributed to the duration thereof to the present time, with their observations thereupon.

Your

Your Committee is sensible that the duration of the said trial, and the causes of that duration, as well as the matters which have therein occurred, do well merit the attentive consideration of this House; we have therefore endeavoured, with all diligence, to employ the powers that have been granted, and to execute the orders that have been given to us, and to report thereon as speedily as possible, and as fully as the time would admit.

Your Committee has considered, first, the mere fact, of the duration of the trial, which they find to have commenced on the 13th day of February 1788, and to have continued, by various adjournments, to the said 17th of March.—During that period the sittings of the Court have occupied one hundred and eighteen days, or about one-third of a year.—The distribution of the sitting days in each year is as follows:

	Days.
In the year 1788, the Court sat - - -	35
1789, - - - - - - - -	17
1790, - - - - - - - -	14
1791, - - - - - - - -	5
1792, - - - - - - - -	22
1793, - - - - - - - -	22
1794, to the 1st of March, inclusive - - - - - -	3
Total - - -	118

Your

Your Committee then proceeded to consider the causes of this duration, with regard to time, as measured by the calendar, and also as measured by the number of days occupied in actual sitting. They find, on examining the duration of the trial, with reference to the number of years which it has lasted, that it has been owing to several prorogations, and to one dissolution of Parliament; to discussions which are supposed to have arisen in the House of Peers, on the legality of the continuance of impeachments from Parliament to Parliament; that it has been owing to the number and length of the adjournments of the Court; particularly the adjournments on account of the circuit, which adjournments were interposed in the middle of the session, and the most proper time for business; that it has been owing to one adjournment, made in consequence of a complaint of the prisoner against one of your Managers, which took up a space of ten days; that two days adjournments were made on account of the illness of certain of the Managers; and, as far as your Committee can judge, two sitting days were prevented by the sudden and unexpected dereliction of the defence of the prisoner at the close of the last session, your Managers not having been then ready to produce their evidence in reply, nor to make their observations on the evidence produced by the prisoner's counsel; as they expected the

the whole to have been gone through before they were called on for their reply. In this session, your Committee computes that the trial was delayed about a week or ten days. The Lords waited for the recovery of the Marquis Cornwallis, the prisoner wishing to avail himself of the testimony of that noble person.

With regard to the 118 days employed in actual sitting, the distribution of the business was in the manner following:—There were spent,

	Days.
In reading the articles of Impeachment, and the defendant's answer, and in debate on the mode of proceeding -	3
Opening speeches, and summing up by the Managers - - - - - - - - -	19
Documentary and oral evidence by the Managers - - - - - - - - - -	51
Opening speeches and summing up by the defendant's counsel, and defendant's addresses to the Court - - -	22
Documentary and oral evidence on the part of the defendant - - - - -	23
	118

The other head, namely, that the trial has occupied 118 days, or nearly one-third of a year:—This your Committee conceives to have arisen from the following immediate causes: first, The nature and extent of the matter to

be

be tried:—secondly, The general nature and quality of the evidence produced; it was principally documentary evidence, contained in papers of great length, the whole of which was often required to be read, when brought to prove a single short fact; or it was oral evidence, in which must be taken into consideration the number and description of the witnesses examined and cross-examined:—thirdly, and principally, The duration of the trial is to be attributed to objections taken by the prisoner's counsel to the admissibility of several documents and persons, offered as evidence on the part of the prosecution. These objections amounted to sixty-two: they gave rise to several debates, and to twelve references from the Court to the Judges. —On the part of the Managers, the number of objections was small; the debates upon them were short: there was not upon them any reference to the Judges; and the Lords did not even retire upon any of them to the Chamber of Parliament.

This last cause of the number of sitting days, your Committee considers as far more important than all the rest. The questions upon the admissibility of evidence; the manner in which these questions were stated and were decided; the modes of proceeding; the great uncertainty of the principle upon which evidence in that Court

Court is to be admitted or rejected: all these appear to your Committee materially to affect the constitution of the House of Peers, as a Court of Judicature, as well as its powers, and the purposes it was intended to answer in the State. The Peers have a valuable interest in the conservation of their own lawful privileges: but this interest is not confined to the Lords. The Commons ought to partake in the advantage of the judicial rights and privileges of that High Court. Courts are made for the suitors, and not the suitors for the Court. The conservation of all other parts of the law, the whole indeed of the rights and liberties of the subject, ultimately depends upon the preservation of the Law of Parliament in its original force and authority.

Your Committee had reason to entertain apprehensions, that certain proceedings in this trial may possibly limit and weaken the means of carrying on any future impeachment of the Commons. As your Committee felt these apprehensions strongly, they thought it their duty to begin with humbly submitting facts and observations, on the proceedings concerning evidence, to the consideration of this House, before they proceed to state the other matters which come within the scope of the directions which they have received.

To enable your Committee the better to execute

cute the task imposed upon them, in carrying on the impeachment of this House, and to find some principle on which they were to order and regulate their conduct therein, they found it necessary to look attentively to the jurisdiction of the court in which they were to act for this House, and into its laws and rules of proceeding, as well as into the rights and powers of the House of Commons in their impeachments.

RELATION OF THE JUDGES, &c. TO THE COURT OF PARLIAMENT.

Upon examining into the course of proceeding in the House of Lords, and into the relation which exists between the Peers on the one hand, and their attendants and assistants,—the Judges of the realm, Barons of the Exchequer of the Coif, the King's learned counsel, and the civilians Masters of the Chancery, on the other; it appears to your Committee, that these judges, and other persons learned in the common and civil laws, are no integrant and necessary part of that court. Their writs of summons are essentially different; and it does not appear that they or any of them have, or of right ought to have, a deliberative voice, either actually or virtually, in the judgments given in the High Court of Parliament. Their attendance in that court is solely ministerial; and their answers to questions Inst. 4. p. 4.

questions put to them, are not to be regarded as declaratory of the law of Parliament, but are merely consultory responses, in order to furnish such matter (to be submitted to the judgment of the Peers) as may be useful in reasoning by analogy, so far as the nature of the rules, in the respective courts of the learned persons consulted, shall appear to the House to be applicable to the nature and circumstance of the case before them, and no otherwise.

JURISDICTION OF THE LORDS.

Your Committee finds, That in all Impeachments of the Commons of Great Britain for high crimes and misdemeanors, before the Peers in the High Court of Parliament, the Peers are not triers or jurors only, but by the ancient laws and constitution of this kingdom, known by constant usage, are judges both of law and fact; and we conceive that the Lords are bound not to act in such a manner as to give rise to an opinion that they have virtually submitted to a division of their legal powers; or that, putting themselves into the situation of mere triers or jurors, they may suffer the evidence in the cause to be produced or not produced before them, according to the discretion of the Judges of the inferior courts.

LAW OF PARLIAMENT.

Your Committee finds, that the Lords, in matter of appeal or impeachment in Parliament, are not of right obliged to proceed according to the course or rules of the Roman civil law, or by those of the law or usage of any of the inferior courts in Westminster Hall; but by the law and usage of Parliament. And your Committee finds, that this has been declared in the most clear and explicit manner, by the House of Lords, in the year of our Lord 1387 and 1388, in the 11th year of King Richard the Second.

Upon an appeal in Parliament then depending, against certain great persons, Peers and Commoners, the said appeal was referred to the justices and other learned persons of the law; "At which time" (it is said in the record) "that "the justices and serjeants, and others the "learned in the law civil, were charged, by "order of the King our Sovereign aforesaid, to "give their faithful counsel to the Lords of the "Parliament, concerning the due proceedings "in the cause of the appeal aforesaid. The "which justices, serjeants, and the learned in "the law of the kingdom, and also the learned "in the law civil, have taken the same into de-"liberation; and have answered to the said "Lords of Parliament, that they had seen and Rolls Par Vol. III. p. 236.

" well considered the tenour of the said Ap-
" peal; and they say, that the same appeal was
" neither made nor pleaded according to the
" order which the one law or the other requires.
" Upon which the said Lords of Parliament have
" taken the same into deliberation and con-
" sultation, and by the assent of our said Lord
" the King, and of their common agreement,
" it was declared, that in so high a crime as
" that which is charged in this appeal, which
" touches the Person of our Lord the King,
" and the State of the whole kingdom, perpe-
" trated by persons who are Peers of the king-
" dom, along with others, the cause shall not
" be tried in any other place but in Parliament,
" nor by any other law than the law and course
" of Parliament; and that it belongeth to the
" Lords of Parliament, and to their franchise
" and liberty by the ancient custom of the Par-
" liament, to be judges in such cases; and in
" these cases to judge by the assent of the
" King; and thus it shall be done in this case,
" by the award of Parliament: because the
" realm of England has not been heretofore, nor
" is it the intention of our said Lord the King,
" and the Lords of Parliament, that it ever
" should be governed by the law civil: And
" also, it is their resolution, not to rule or govern
" so high a cause as this appeal is, which can-

" not

" not be tried any where but in Parliament, as " hath been said before, by the course, process, " and order used in any courts or place inferior, " in the same kingdom; which courts and places " are not more than the executors of the an- " tient laws and customs of the kingdom, and " of the ordinances and establishments of Par- " liament. It was determined by the said Lords " of Parliament, by the assent of our said Lord " the King, that this appeal was made and " pleaded well and sufficiently, and that the " process upon it is good and effectual, accord- " ing to the law and course of Parliament, and " for such they decree and adjudge it."

And your Committee finds, that toward the close of the same Parliament, the same right was again claimed and admitted as the special privilege of the Peers, in the following manner: —" In this Parliament, all the Lords then pre- " sent, Spiritual as well as Temporal, claimed " as their franchise that the weighty matters " moved in this Parliament, and which shall be " moved in other Parliaments in future times, " touching the Peers of the land, shall be ma- " naged, adjudged, and discussed by the course " of Parliament, and in no sort by the law civil, " or by the common law of the land, used in " the other lower courts of the kingdom, which

Rol. Par. Vol. III. p. 244, §

" claim, liberty, and franchise, the King gra-
" ciously allowed and granted to them in full
" Parliament."

Your Committee finds, that the Commons, having at that time considered the appeal above mentioned, approved the proceedings in it; and, as far as in them lay, added the sanction of their accusation against the persons who were the objects of the appeal. They also, immediately afterwards, impeached all the Judges of the Common Pleas, the Chief Baron of the Exchequer, and other learned and eminent persons, both Peers and Commoners; upon the conclusion of which Impeachments it was that the second claim was entered. In all the transactions aforesaid, the Commons were acting parties: yet neither then, nor ever since, have they made any objection or protestation that the rule laid down by the Lords, in the beginning of the session of 1388, ought not to be applied to the Impeachments of Commoners as well as Peers. In many cases they have claimed the benefit of this rule; and in all cases they have acted, and the Peers have determined upon the same general principles. The Peers have always supported the same franchises; nor are there any precedents upon the Records of Parliament subverting either the general rule or the particular privilege;

so far as the same relates either to the course of proceeding or to the rule of law, by which the Lords are to judge.

Your Committee observes also, that in the commissions to the several Lords High Stewards, who have been appointed on the trials of Peers impeached by the Commons, the proceedings are directed to be had according to the law and custom of the kingdom, *and the custom of Parliament*; which words are not to be found in the commissions for trying upon indictments.

"As every court of justice" (says Lord Coke) "hath laws and customs for its direction, some "by the common law, some by the civil and "canon law, some by peculiar laws and cus- "toms, &c. So the High Court of Parliament, "*suis propriis legibus & consuetudinibus subsistit.* "It is by the Lex & Consuetudo Parliamenti, that "all weighty matters in any Parliament moved, "concerning the Peers of the realm, or Commons "in Parliament assembled, ought to be deter- "mined, adjudged, and discussed by the course "of the Parliament, and not by the civil law, nor "yet by the common laws of this realm used in "more inferiour courts."—And after founding himself on this very precedent of the 11th of Richard II, he adds, "*This is the reason* "*that Judges ought not to give any opinion* "*of a matter of Parliament, because it is not* 4 Inst. p. 15.

" *to be decided by the common laws but se-*
" *cundem legem & consuetudinem Parliamenti:*
" *And so the Judges in divers Parliaments have*
" *confessed.*"

RULE OF PLEADING.

Your Committee do not find, that any rules of pleading, as observed in the inferiour courts, have ever obtained in the proceedings of the High Court of Parliament, in a cause or matter in which the whole procedure has been within their original jurisdiction. Nor does your Committee find, that any demurrer or exception, as of false or erroneous pleading, hath been ever admitted to any impeachment in Parliament, as not coming within the form of the pleading; and although a reservation or protest is made by the defendant (matter of form, as we conceive) " to the generality, uncertainty, and in-
" sufficiency of the articles of Impeachment;" yet no objections have in fact been ever made in any part of the record; and when verbally they have been made (until this trial) they have constantly been over-ruled.

The trial of Lord Strafforde is one of the most important æras in the history of Parliamentary Judicature. In that trial, and in the dispositions made preparatory to it, the process on Impeachments

Ch. I. 40.

Impeachments was, on great consideration, research, and selection of precedents, brought very nearly to the form which it retains at this day; and great and important parts of parliamentary law were then laid down. The Commons at that time made new charges, or amended the old, as they saw occasion. Upon an application from the Commons to the Lords, that the examinations taken by their Lordships, at their request, might be delivered to them, for the purpose of a more exact specification of the charge they had made, on delivering the message of the Commons, Mr. Pim, amongst other things, said, as it is entered in the Lords Journals, "According to the clause of reservation "in the conclusion of their charge, they (the "Commons) will add to the charges, not to the "matter in respect of comprehension, extent, "or kind, but only to reduce them to more "particularities, that the Earl of Strafforde "might answer with the more clearness and "expedition—not *that they are bound by this "way of SPECIAL charge*; *and therefore they "have taken care in their House, upon protes-"tation, that this shall be no prejudice to bind "them from proceeding in GENERAL in other "cases, and that they are not to be ruled by pro-"ceedings in other courts, which protestation* Lords Journals Vol. IV. p. 133.

" *they have made for the preservation of the* " *power of Parliament; and they desire that* " *the like care may be had in your Lordships* " *House.*" This protestation is entered on the Lords Journals. Thus careful were the Commons that no exactness used by them for a temporary accommodation, should become an example derogatory to the larger rights of parliamentary process.

ls nals, XIX. 3.

At length the question of their being obliged to conform to any of the rules below, came to a formal judgment. In the trial of Dr. Sacheverell, March 10th, 1709, the Lord Nottingham " desired their Lordships opinion, whether he " might propose a question to the Judges *here* " [in Westminster Hall.] Thereupon the Lords " being moved to adjourn, adjourned to the " House of Lords, and on debate [as appears by a " note] it was agreed that the question should be " proposed in Westminster Hall." Accordingly, when the Lords returned the same day into the Hall, the question was put by Lord Nottingham, and stated to the Judges by the Lord Chancellor: " Whether by the *law of England*, and " constant practice in all prosecutions by *in-* " *dictment and information*, for crimes and " misdemeanors, by writing or speaking, the " particular words supposed to be written or

" spoken

" spoken must not be expressly specified in " the indictment or information?" On this question the Judges, *seriatim*, and in open court, delivered their opinion: The substance of which was, " That by the laws of " England, and the constant practice in West- " minster Hall, the words ought to be expressly " specified in the indictment or information." Then the Lords adjourned, and did not come into the Hall until the 20th. In the intermediate time they came to resolutions on the matter of the question put to the Judges. Dr. Sacheverell, being found guilty, moved in arrest of judgment upon two points:—The first, which he grounded on the opinion of the Judges, and which your Committee thinks most to the present purpose, was, " That no entire clause, " or sentence, or expression, in either of his " sermons or dedications, is particularly set " forth in his impeachment, which he has already " heard the Judges declare to be necessary " in all cases of indictments or informations." Lords Journals, Vol. XIX p. 116.

On this head of objection, the Lord Chancellor, on the 23d of March, agreeably to the resolutions of the Lords of the 14th and 16th of March, acquainted Dr. Sacheverell: " That " on occasion of the question before put to " the Judges *in Westminster Hall*, and their " answer thereto, their Lordships had fully " debated

" debated and considered of that matter, and " had come to the following resolution: " That " this House will proceed to the determination " of the impeachment of Dr. Henry Sache- " verell, according to the *law of the land, and* " *the law and usage of Parliament.*" And afterwards to this resolution: " That by the " *law and usage of Parliament* in prosecu- " tions for high crimes and misdemeanors, by " writing or speaking, the particular words, " supposed to be criminal, are *not necessary* to " be expressly specified in such impeachment. " So that, in their Lordships opinion, the law " and usage of the high court of Parliament " being a *part of the law of the land*, and that " usage not requiring that words should be " exactly specified in impeachments, the answer " of the Judges, which related only to the course " of *indictments and informations*, does not in " the least affect your case."

Lords Journals, Vol. XIX. 121.

On this solemn judgment concerning the law and usage of Parliament, it is to be remarked; First, That the impeachment itself is not to be presumed inartificially drawn. It appears to have been the work of some of the greatest lawyers of the time, who were perfectly versed in the manner of pleading in the courts below; and would naturally have imitated their course, if they had not been justly fearful of setting an example,

example, which might hereafter subject the plainness and simplicity of a Parliamentary proceeding to the technical subtilties of the inferior courts: Secondly, That the question put to the Judges, and their answer, were strictly confined to the law and practice below; and that nothing in either had a tendency to their delivering an opinion concerning Parliament, its laws, its usages, its course of proceeding, or its powers: Thirdly, That the motion in arrest of judgment, grounded on the opinion of the Judges, was made only by Dr. Sacheverell himself, and not by his counsel, men of great skill and learning, who, if they thought the objections had any weight, would undoubtedly have made and argued them.

Here, as in the case of the 11th King Richard the Second, the Judges declared unanimously, That such an objection would be fatal to such a pleading in any indictment or information: But the Lords, as on the former occasion, overruled this objection, and held the article to be good and valid, notwithstanding the report of the Judges concerning the mode of proceeding in the courts below.

Your Committee finds, that a protest, with reasons at large, was entered by several Lords against this determination of their court. It is always

Lords Journals Vol. XI p. 106.

always an advantage to those who protest, that their reasons appear upon record; whilst the reasons of the majority who determine the question, do not appear. This would be a disadvantage of such importance, as greatly to impair, if not totally to destroy, the effect of precedent as authority, if the reasons which prevailed were not justly presumed to be more valid than those which have been obliged to give way; the former having governed the final and conclusive decision of a competent court. But your Committee, combining the fact of this decision with the early decision just quoted, and with the total absence of any precedent of an objection, before that time or since, allowed to pleading, or what has any relation to the rules and principles of pleading as used in Westminster Hall, has no doubt that the House of Lords was governed in the 9th of Anne by the very same principles which it had solemnly declared in the 11th of Richard the Second.

But besides the presumption in favour of the reasons which must be supposed to have produced this solemn judgment of the Peers, contrary to the practice of the courts below, as declared by all the Judges—it is probable, that the Lords were unwilling to take a step, which might admit that any thing in that practice should be

be received as their rule. It must be observed, however, that the reasons against the article, alledged in the protest, were by no means solely bottomed in the practice of the courts below, as if the main reliance of the protesters was upon that usage. The protesting minority maintained, that it was not agreeable to *several precedents in Parliament*; of which they cited many in favour of their opinion.—It appears by the Journals, that the clerks were ordered to search for precedents, and a committee of Peers was appointed to inspect the said precedents, and to report upon them,—and that they did inspect and report accordingly. But the Report is not entered on the Journals. It is, however, to be presumed that the greater number and the better precedents supported the judgment. Allowing, however, their utmost force to the precedents there cited, they could serve only to prove, that in the *case of words* (to which alone, and not the case of a *written* libel, the precedents extended) such a special averment, according to the tenor of the words, had been used; but not that it was necessary, or that ever any plea had been rejected upon such an objection. As to the course of Parliament, resorted to for authority in this part of the protest, the argument seems rather to affirm than to deny the general

general proposition, that its own course, and not that of the inferior courts, had been the rule and law of Parliament.

6 Trials, V. As to the objection taken in the protest, drawn from natural right, the Lords knew, and it appears in the course of the proceeding, that the whole of the libel had been read at length, as appears from p. 655 to p. 666. So that Dr. Sacheverell had *substantially* the same benefit of any thing which could be alledged in the extenuation or exculpation, as if his libellous sermons had been entered verbatim upon the recorded impeachment. It was adjudged sufficient to state the crime *generally* in the impeachment. The libels were given in *evidence*; and it was not then thought of, that nothing should be given in evidence which was not specially charged in the impeachment.

But whatever their reasons were (great and grave they were, no doubt) such, as your Committee has stated it, is the *judgment* of the Peers on the law of Parliament, as a part of the law of the land. It is the more forcible, as concurring with the judgment in the 11th of Richard the Second, and with the total silence of the rolls and journals concerning any objection to pleading ever being suffered to vitiate an impeachment, or to prevent evidence being given upon

it on account of its generality, or any other failure.

Your Committee do not think it probable that, even before this adjudication, the rules of pleading below could ever have been adopted in a Parliamentary proceeding, when it is considered that the several statutes of jeofails, not less than twelve in number, have been made for the correction of an over-strictness in pleading, to the prejudice of substantial justice: Yet in no one of these is to be discovered the least mention of any proceeding in Parliament. There is no doubt, that the Legislature would have applied its remedy to that grievance in Parliamentary proceedings, if it had found those proceedings embarrassed with what Lord Mansfield, from the Bench, and speaking of the matter of these statutes, very justly calls "disgraceful subtilties."

Statutes at large from 12 Ed. I. to 16 and 17 Ch. II.

What is still more strong to the point, your Committee finds, that, in the 7th of William the Third, an act was made for the regulating of trials for treason and misprision of treason, containing several regulations for reformation of proceedings at law, both as to matters of form and substance, as well as relative to evidence. It is an act thought most essential to the liberty of the subject; yet in this high and critical matter, so deeply affecting the lives, properties, honours,

7 W. III. ch. 3, sect 12.

honours, and even the inheritable blood of the subject, the Legislature was so tender of the high powers of this high court, deemed so necessary for the attainment of the great objects of its justice, so fearful of enervating any of its means, or circumscribing any of its capacities, even by rules and restraints the most necessary for the inferior courts, that they guarded against it by an express proviso, "That neither this Act, "nor any thing therein contained, shall any "ways extend to *any impeachment, or other* "*proceedings in Parliament, in any kind* "*whatsoever.*"

CONDUCT OF THE COMMONS IN PLEADING.

The point being thus solemnly adjudged in the case of Dr. Sacheverell, and the principles of the judgment being in agreement with the whole course of parliamentary proceedings, the Managers for this House have ever since considered it as an indispensable duty, to assert the same principle in all its latitude upon all occasions on which it could come in question—and to assert it with an energy, zeal, and earnestness, proportioned to the magnitude and importance of the interest of the Commons of Great Britain, in the religious observation of the rule, *that the Law of Parliament, and the Law of Parliament*

Parliament only, should prevail in the Trial of their Impeachments.

In the year 1715 (1 Geo. I.) the Commons thought proper to impeach of high treason the Lords, who had entered into the rebellion of that period. This was about six years after the decision in the case of Sacheverell. On the trial of one of these Lords (the Lord Wintoun) after verdict, the prisoner moved in arrest of judgment, and excepted against the impeachment for error, on account of the treason therein laid "not being described with sufficient cer- "tainty—the day on which the treason was "committed not having been alledged." His counsel was heard to this point. They contended, 'that the forfeitures in cases of treason 'are very great; and therefore they humbly 'conceived, that the accusation ought to con- 'tain all the certainty it is capable of; that the 'prisoner may not, by *general allegations*, be 'rendered incapable to defend himself in a case, 'which may prove fatal to him. That they 'would not trouble their Lordships with citing 'authorities; for they believed there is not one 'gentleman of the Long Robe but will agree 'that an indictment for any capital offence to be 'erroneous, if the offence be not alledged to be 'committed on a certain day.'—"That this "impeachment set forth only that in or about

State Tri. Vol. VI. p. 17.

" the months of September, October, or No-
" vember 1715,"—' the offence charged in the
' impeachment had been committed. The coun-
' sel argued that a proceeding by impeachment
' is a proceeding at the common law, for Lex
' Parliamentaria is a part of common law, and
' they submitted whether there is not the same
' certainty required in one method of proceeding
' at common law as in another.'

The matter was argued elaborately and learnedly, not only on the general principles of the proceedings below, but on the inconvenience and possible hardships attending this uncertainty. They quoted Sacheverell's case, in whose impeachment " the precise days were
" laid when the Doctor preached each of these
" two sermons; and that by a like reason a cer-
" tain day ought to be laid in the impeachment
" when this treason was committed; and that
" the authority of Dr. Sacheverell's case seemed
" so much stronger than the case in question, as
" the crime of treason is higher than that of a
" misdemeanor."

Here the Managers for the Commons brought the point a second time to an issue, and that on the highest of capital cases; an issue, the event of which was to determine for ever, whether their impeachments were to be regulated by the law, as understood and observed in the in-

ferior

ferior Courts.—Upon the usage below there was no doubt; the indictment would unquestionably have been quashed;—but the Managers for the Commons stood forth upon this occasion with a determined resolution, and no less than four of them *seriatim* rejected the doctrine contended for by Lord Wintoun's counsel. They were all eminent members of parliament, and three of them great and eminent lawyers, namely, the then Attorney General, Sir William Thompson, and Mr. Cowper.

Mr. Walpole said, "Those learned gentlemen "(Lord Wintoun's counsel) *seem to forget in* "*what Court they are.* They have taken up so "much of your Lordships time in quoting of "authorities, and using arguments to shew your "Lordships what would quash an indictment in "the *Courts below*, that they seemed to forget "they are now in a *Court of Parliament, and* "*on an Impeachment of the Commons of Great* "*Britain.* For, should the Commons admit all "that they have offered, it will not follow that "the impeachment of the Commons is insuf-"ficient; and I must observe to your Lord-"ships, that neither of the learned gentlemen "have offered to produce one instance relative "to an impeachment; I mean to shew that the "sufficiency of an impeachment was never "called in question for the generality of the

" charge, or that any instance of that nature " was offered at before. The Commons do not " conceive, that, if this exception would quash " an indictment, it would therefore make the " impeachment insufficient. I hope it never " will be allowed here as a reason, that what " quashes an indictment in the Courts below, " will make insufficient an impeachment brought " by the Commons of Great Britain."

The Attorney General supported Mr. Walpole in affirmance of this principle. He said: " I would follow the steps of the learned gen- " tleman who spoke before me, and I think he " has given a good answer to these objections. " I would take notice that we are upon an im- " peachment, not upon an indictment. The " Courts below have set forms to themselves, " which have prevailed for a long course of " time, and thereby are become the forms by " which those Courts are to govern themselves; " but it never was thought that the forms of " those Courts had any influence on the pro- " ceedings of Parliament. In Richard the " Second's time, it is said in the Records of " Parliament, that proceedings in Parliament " are not to be governed by the forms of West- " minster Hall. We are in the case of an Im- " peachment, and in the Court of Parliament. " Your Lordships have already given judgment

" against

" against six upon this Impeachment, and it is " warranted by the precedents in Parliament; " therefore we insist that the articles are good in " substance."

Mr. Cowper—" They (the counsel) cannot " but know that the usages of Parliament are " part of the laws of the land, although they " differ in many instances from the common law, " as practised in the inferior Courts, in point of " form. My Lords, if the Commons, in pre- " paring Articles of Impeachment, should govern " themselves by precedents of indictments, in " my humble opinion they would depart from " the ancient, nay, the constant usage and " practice of Parliament. It is well known that " the form of an impeachment has very little " resemblance to that of an indictment: and, " I believe, the Commons will endeavour to " preserve the difference, by adhering to their " own precedents."

Sir William Thompson.—" We must refer to " the forms and proceedings in the Court of " Parliament, and which must be owned to be " part of the law of the land. It has been men- " tioned already to your Lordships, that the " precedents in impeachments are not so nice " and precise in form as in the inferior Courts; " and we presume your Lordships will be

time antecedent to the indictment to alledge, and give evidence of facts against the prisoner. It has been usual, particularly in later indictments, to add, "at several other times." But the strictness of naming one day is still necessary, and the want of the larger words would not quash the indictment. 2dly. A comparison of the extreme rigour and exactness required in the more *formal* part of the proceeding by indictment with the extreme laxity used in the *substantial* part (that is to say, the evidence received to prove the fact) fully demonstrates that the partizans of those forms would put shackles on the High Court of Parliament, with which they are not willing, or find it wholly impracticable, to bind themselves. 3dly. That the latitude of departure from the letter of the indictment (which holds in other matters besides this) is in appearance much more contrary to natural justice than any thing which has been objected against the evidence offered by your Managers, under a pretence that it exceeded the limits of pleading. For in the case of indictments below, it must be admitted, that the prisoner may be unprovided with proof of an Alibi, and other material means of defence, or may find some matters unlooked-for produced against him, by witnesses utterly unknown to him: Whereas

Whereas nothing was offered to be given in evidence under any of the Articles of this Impeachment, except such as the prisoner must have had perfect knowledge of, the whole consisting of matters sent over by himself to the Court of Directors, and authenticated under his own hand. No substantial injustice or hardship of any kind could arise from our evidence under our pleading—whereas in theirs, very great and serious inconveniencies might well happen.

Your Committee has further to observe, that in the case of Lord Wintoun, as in the case of Dr. Sacheverell, the Commons had in their managers, persons abundantly practised in the law, as used in the inferior jurisdictions, who could easily have followed the precedents of indictments—if they had not purposely, and for the best reasons, avoided such precedents.

A great writer on the criminal law, *Justice Foster*, in one of his discourses, fully recognizes those principles for which your Managers have contended, and which have to this time been uniformly observed in Parliament. In a very elaborate reasoning on the case of a trial in Parliament, (the trial of those who had murdered Edward the Second) he observes thus; "It is "*well known* that in *parliamentary* proceedings "of this kind, *it is, and ever was*, sufficient "that matters appear with proper light and cer-

Discours IV. p. 3

"tainty

" Lord Coke) the records of Parliaments have " been so highly extolled is, that therein is set " down, in cases of difficulty, not only the " judgment and resolution, but *the reasons and* " *causes of the same* by so great advice."

ate Trials, ol. II. 725. . D. 1678.

In the 30th of Charles the Second, during the trial of Lord Cornwallis, on the suggestion of a question in law to the Judges, Lord Danby demanded of the Lord High Steward, the Earl of Nottingham, " Whether it would be proper " here (in open court) to ask the question of " your Grace, or to propose it to the Judges?" The Lord High Steward answered, " If your " Lordships doubt of any thing whereon a ques- " tion in law ariseth, the latter opinion, and the " *better* for the prisoner is—*that it must be stated* " *in the presence of the prisoner, that he may know* " *whether the question be truly put.*" It hath " *sometimes* been practised otherwise; and the " Peers have sent for the Judges, and have " asked their opinion in private, and have come " back and have given their verdict according " to that opinion, and there is scarcely a pre- " cedent of its being otherwise done. There is " a later authority in print that doth settle the " point so as I tell you—and I do conceive " *it ought to be followed*; and it being safer for " the prisoner, my humble opinion to your " Lordship is—that he ought to be present at

" *the*

" *the stating of the question.* Call the *prisoner.*" —The prisoner, who had withdrawn, again appearing, he said,

" My Lord Cornwallis, and my Lords the " Peers, since *they* have withdrawn, have con- " ceived a doubt in some matter *of fact* in your " case; and they have that tender regard of " a prisoner at the bar, *that they will not suffer* " *a case to be put up in his absence,* lest it should " chance to prejudice him by being *wrong* " *stated.*" Accordingly the question was both put, and the Judges answer given publicly and in his presence."

Very soon after the trial of Lord Cornwallis, the Impeachment against Lord Stafford was brought to a hearing, that is, in the 32d of Charles the Second. In that case the Lord at the bar having stated a point of law, " touching " the necessity of two witnesses to an overt act " in case of treason;" the Lord High Steward told Lord Stafford, that " all the Judges that " assist them, *and are here in your Lordships* " *presence and hearing,* should deliver their " opinions, whether it be doubtful and disput- " able, or not."—Accordingly the Judges delivered their opinion, and each argued it (though they were all agreed) *seriatim* and *in open court.* Another abstract point of law was also proposed from the bar on the same trial, concerning the legal

legal sentence in high treason; and in the same manner the Judges on reference delivered their opinion in *open court*; and no objection was taken to it, as any thing new or irregular.

ıte Trials, l. III. 212.

In the 1st of James the Second, came on a remarkable trial of a Peer; the trial of Lord Delamere. On that occasion a question of law was stated. There also, in conformity to the precedents and principles given on the trial of Lord Cornwallis, and the precedent in the impeachment of Lord Stafford, the then Lord High Steward took care that the opinion of the Judges should be given in open court.

Precedents grounded on principles so favourable to the fairness and equity of judicial proceedings, given in the reigns of Charles the Second and James the Second, were not likely to be abandoned after the Revolution. The first trial of a Peer, which we find after the Revolution, was that of the Earl of Warwick.

ıte Trials, l. V. 169.

In the case of the Earl of Warwick, 11 Will. III. a question in law upon evidence was put to the Judges; the statement of the question was made in open court by the Lord High Steward, Lord Somers: "If there be six in company, and one "of them is killed, the other five are afterwards "indicted, and three are tried and found guilty "of manslaughter, and upon their prayers have "their clergy allowed, and the burning in the "hand

" hand is respited, but not pardoned, whether " any of the three can be a witness on the trial " of the other two." Lord Halifax—" I sup- " pose your Lordships will have the opinion of " the Judges upon this point; and *that must be* " *in the presence of the prisoner.*" Lord High " Steward *(Lord Somers)*, " *It must certainly* " *be in the presence of the prisoner*, if you ask " the Judges opinions."

In the same year, Lord Mohun was brought to trial upon an indictment for murder. In this single trial a greater number of questions was put to the Judges in matter of law, than probably was ever referred to the Judges in all the collective body of trials, before or since that period. That trial, therefore, furnishes the largest body of authentic precedents in this point, to be found in the records of Parliament. The number of questions put to the Judges in this trial was twenty-three. They all originated from the Peers themselves; yet the Court called upon the party's counsel, as often as questions were proposed to be referred to the Judges, as well as on the counsel for the Crown, to argue every one of them *before* they went to those learned persons. Many of the questions accordingly were argued at the bar at great length. The opinions were given and argued *in open court*. Peers frequently insisted that the Judges should give

State Tri Vol. IV. from p. to 551.

give their opinions *seriatim*, which they did always publicly in the court, with great gravity and dignity, and greatly to the illustration of the law, as they held and acted upon it in their own courts.

In Sacheverell's case (just cited for another purpose) the Earl of Nottingham demanded whether he might not propose a question of law to the Judges *in open court*. It was agreed to; and the Judges gave their answer *in open court*, though this was after verdict given: And in consequence of the advantage afforded to the prisoner in hearing *the opinion* of the Judges, he was thereupon enabled to move in arrest of judgment.

The next precedent which your Committee finds of a question put by the Lords, sitting as a Court of Judicature, to the Judges pending the trial, was in the 20th of George the Second; when Lord Balmerino, who was tried on an indictment for high treason, having raised a doubt, whether the evidence proved him to be at the place assigned for the overt act of treason on the day laid in the indictment. The point was argued at the bar by the counsel for the Crown in the prisoner's presence, and for his satisfaction. The prisoner, on hearing the argument, waived his objection, but the then Lord President moving their Lordships to adjourn to the Chamber of Parliament,

ords Journals, Vol. f. p. 606. ie Lunæ, 3 July 46.

Parliament, the Lords adjourned accordingly; and after some time, returning into Westminster Hall—the Lord High Steward *(Lord Hardwicke)* said, "Your Lordships were pleased, "in the Chamber of Parliament, to come to "a resolution, that the opinion of the learned "and reverend Judges should be taken on "the following question, namely, Whether "it is necessary that an overt act of high "treason should be proved to have been committed on the particular day laid in the indictment? Is it your Lordships pleasure, that "the Judges do now give their opinion on that "question?

"Lords.—Aye, aye.

"Lord High Steward—My Lord Chief Justice! Lord Chief Justice L

"Lord Chief Justice,

"The question proposed by your Lordships "is, Whether it be necessary that an overt act "of high treason should be proved to be committed on the particular day laid in the indictment? We are all of opinion, that it is not necessary to prove the overt act to be committed "on the particular day laid in the indictment "—but as evidence may be given of an overt "act before the day, so it may be after the day "specified in the indictment—for the day laid "is circumstance and form only, and not ma-

" terial in point of proof, this is the known " constant course of proceeding in trials."

Here the case was made for the Judges, for the satisfaction of one of the Peers, after the prisoner had waived his objection. Yet it was thought proper, as a matter of course and of right, that the Judges should state the question put to them in the open court, and in presence of the prisoner—and that in the same open manner, and in the same presence, their answer should be delivered.

Your Committee concludes their precedents begun under *Lord Nottingham* and ended under *Lord Hardwicke*. They are of opinion, that a body of precedents so uniform, so accordant with principle, made in such times, and under the authority of a succession of such great men, ought not to have been departed from. The single precedent to the contrary, to which your Committee has alluded above, was on the trial of the Dutchess of Kingston, in the reign of His present Majesty. But in that instance, the reasons of the Judges were, by order of the House, delivered in writing, and entered at length on the Journals; so that the legal principle of the decision is equally to be found, which is not the case in any one instance of the present impeachment.

The Earl of Nottingham, in Lord Cornwallis's case,

case, conceived, though it was proper and agreeable to justice, that this mode of putting questions to the Judges, and receiving their answer in public, was not supported by former precedents: But, he thought, a book of authority had declared in favour of this course. Your Committee is very sensible, that antecedent to the great period to which they refer, there are instances of questions having been put to the Judges privately. But we find the *principle* of publicity (whatever variations from it there might be in practice) to have been so clearly established at a more early period, that all the Judges of England resolved, in Lord Morley's trial, in the year 1666 (about twelve years before the observation of Lord Nottingham) *on a supposition, that the trial should be actually concluded, and the Lords retired to the Chamber of Parliament to consult on their verdict,* that even in that case (much stronger than the observation of your Committee requires for its support) if their opinions should then be demanded by the Peers, for the information of their private conscience, yet they determined that they should be given in public. This resolution is in itself so solemn, and is so bottomed on constitutional principle, and legal policy, that your Committee have thought fit to insert it verbatim, in their Report, as they relied upon

it at the bar of the court, when they contended for the same publicity.

" It was resolved, That in case the Peers who " are triers, *after the evidence given, and the* " *prisoner withdrawn, and they gone to consult* " *of the verdict*, should desire to speak with any " of the Judges, to have their opinion upon any " point of law, that if the Lord Steward spoke " to us to go, we should go to them. But when " the Lords asked us any question, we should " not deliver any private opinion; but let them
lynge's ports, 54. " know, *we were not to deliver any private* " *opinion without conference with the rest of the* " *Judges, and that to be done openly in court*; " *and this (notwithstanding the precedent in the* " *case of the Earl of Castlehaven) was thought* " *prudent, in regard of ourselves, as well as for* " *the avoiding suspicion which might grow by* " *private opinions—ALL resolutions of Judges* " *being ALWAYS done in public.*"

The Judges in this resolution over-ruled the authority of the precedent, which militated against the whole spirit of their place and profession. Their declaration was without reserve or exception, that " *all* resolutions of the Judges " are *always* done in public."—These Judges (as should be remembered to their lasting honour) did not think it derogatory from their dignity, nor from their duty to the House of Lords, to take

take such measures concerning the publicity of their resolutions, as should secure them from suspicion. They knew that the mere circumstance of privacy in a Judicature, where any publicity is in use, tends to beget suspicion and jealousy.—Your Committee is of opinion, that the honourable policy of avoiding suspicion, by avoiding privacy, is not lessened by any thing which exists in the present time, and in the present trial.

Your Committee has here to remark, that this learned Judge seemed to think the case of Lord Audley [Castlehaven] to be more against him, than in truth it was. The precedents were as follow: The opinions of the Judges were taken three times. The first time by the Attorney General at Serjeant's Inn, antecedent to the trial —the last time, after the Peers had retired to consult on their verdict,—the middle time, *was during the trial itself*; and here the opinion was taken in open court, agreeably to what your Committee contends to have been the usage ever since this resolution of the Judges. What was done before seemed to have passed sub silentio, and possibly through mere inadvertence. Rushwor Vol. II. p. 93, 94 95, 100.

Your Committee observes, That the precedents by them relied on, were furnished from times in which the judicial proceedings in Parliament, and in all our courts, had obtained a very regular form. They were furnished at

a period in which Justice Blackstone remarks, that more laws were passed, of importance to the rights and liberties of the subject, than in any other. These precedents lean all one way, and carry no marks of accommodation to the variable spirit of the times, and of political occasions. They are the same before and after the Revolution. They are the same through five reigns. The great men who presided in the tribunals which furnished these examples, were in opposite political interests, but all distinguished for their ability, integrity, and learning.

The Earl of Nottingham, who was the first on the bench to promulgate this publicity as a rule, has not left us to seek the principle in the case: That very learned man considers the publicity of the questions and answers as a matter of justice, *and of justice favourable to the prisoner.* In the case of Mr. Hastings, the prisoner's counsel did not join your Committee in their endeavours to obtain the publicity we demanded. Their reasons we can only conjecture. But your managers, acting for this House, were not the less bound, to see that the due parliamentary course should be pursued, even when it is most favourable to those whom they impeach. If it should answer the purposes of one prisoner to waive the rights which belong to all prisoners, it was the duty of your Managers to protect those

general rights against that particular prisoner. It was still more their duty to endeavour, that their *own* questions should not be erroneously stated, or cases put which varied from those which they argued, or opinions given in a manner not supported by the spirit of our laws and institutions, or by analogy with the practice of all our courts.

Your Committee, much in the dark about a matter, in which it was so necessary that they should receive every light, have heard, that in debating this matter abroad, it has been objected, that many of the precedents on which we most relied were furnished in the Courts of the Lord High Steward, and not in trials where the Peers were Judges; and that the Lord High Steward not having it in his power to retire with the Juror Peers, the Judges opinions, from necessity, not from equity to the parties, were given before that magistrate.

Your Committee thinks it scarcely possible, that the Lords could be influenced by such a feeble argument. For, admitting the fact to have been as supposed, there is no sort of reason why so uniform a course of precedents, in a legal court, composed of a Peer for judge, and Peers for triers—a course so favourable to all parties and to equal justice—a course in concurrence with the procedure of all our other courts, should

not have the greatest authority over their practice in every trial before the *whole body* of the Peerage.

The Earl of Nottingham, who acted as High Steward in one of these commissions, certainly knew what he was saying. He gave no such reason. His argument for the publicity of the Judges opinions, did not turn at all on the nature of his court, or of his office in that court. It rested on the equity of the principle, and on the fair dealing due to the prisoner.

Lord Somers was in no such court; yet his declaration is full as strong. He does not indeed argue the point, as the Earl of Nottingham did when he considered it as a new case. Lord Somers considers it as a point quite settled—and no longer standing in need of being supported by reason or precedent.

But it is a mistake that the precedents stated in this Report are wholly drawn from proceedings in that kind of court. Only two are cited, which are furnished from a court constituted in the manner supposed. The rest were in trials by all the Peers, and not by a Jury of Peers with an High Steward.

ster's own Law, 145. After long discussions with the Peers on this subject, "The Lords Committees in a conference told them [the Committee of this "House, appointed to a conference on the matter]

" matter] that the High Steward is but Speaker " pro tempore, and giveth his vote as well as " the other Lords: This changeth not the na- " ture of the court. And the Lords declared, " that they have power enough to proceed to " trial, though the King should not name an " High Steward." On the same day, " It " is declared and ordered, by the Lords " Spiritual and Temporal in Parliament as- " sembled, that the office of High Steward on " Trials of Peers upon Impeachments is not " necessary to the House of Peers—but that " Lords may proceed in such trials, if an High " Steward is not appointed, according to their " humble desire."

To put the matter out of all doubt, and to remove all jealousy on the part of the Commons, the commission of the Lord High Steward was then altered. These rights, contended for by the Commons in their impeachments, and admitted by the Peers, were asserted in the proceedings preparatory to the trial of Lord Stafford, in which that long chain of uniform precedents, with regard to the publicity of the Judges opinions in trials, begins.

For these last citations, and some of the remarks, your Committee are indebted to the learned and upright Justice Foster. They have compared them with the Journals, and find them correct.

correct. The same excellent author proceeds to demonstrate that whatever he says of trials by impeachment is equally applicable to trials before the High Steward on indictment; and consequently that there is no ground for a distinction, with regard to the public declaration of the Judges opinions, founded on the inapplicability of either of these cases to the other. The argument on this whole matter is so satisfactory, that your Committee has annexed it at large to their Report *. As there is no difference in fact between these trials (especially since the Act which provides that all the Peers shall be summoned to the trial of a Peer) so there is no difference in the reason and principle of the publicity, let the matter of the Steward's jurisdiction be as it may.

PUBLICITY GENERAL.

Your Committee do not find any positive law which binds the Judges of the Courts in Westminster Hall publicly to give a reasoned opinion from the Bench, in support of their judgment upon matters that are stated before them. But the course hath prevailed from the oldest times. It hath been so general and so uniform, that it must be considered as the law of the land. It has

* See the Appendix, N° 1.

has prevailed, so far as we can discover, not only in all the courts which now exist, whether of law or equity, but in those which have been suppressed or disused, such as the Court of Wards and the Star Chamber. An author, quoted by Rushworth, speaking of the constitution of that Chamber, says, "And so it was "resolved, *by the Judges, on reference made to* "*them*; *and their opinion, after deliberate hear-* "*ing, and view of former precedents, was pub-* "*lished in open court.*" It appears elsewhere in the same compiler, that all their proceedings were public, even in deliberating previous to judgment.

Rushworth, Vol. II. p. 457. & passim.

The Judges in their reasonings have always been used to observe on the arguments employed by the counsel on either side; and on the authorities cited by them, assigning the grounds for rejecting the authorities which they reject, or for adopting those to which they adhere, or for a different construction of law, according to the occasion. This publicity, not only of decision but of deliberation, is not confined to their several courts, whether of law or equity, whether above, or at Nisi Prius, but it prevails where they are assembled in the Exchequer Chamber, or at Serjeant's Inn, or wherever matters come before the Judges collectively for consultation and revision.—It seems to your Committee

Committee to be moulded in the essential frame and constitution of British judicature. Your Committee conceives, that the English jurisprudence has not any other sure foundation, nor consequently the lives and properties of the subject any sure hold, but in the maxims, rules, and principles, and juridical traditionary line of decisions contained in the notes taken, and from time to time published (mostly under the sanction of the Judges) called Reports.

In the early periods of the law it appears to your Committee, that a course still better had been pursued, but grounded on the same principles; and that no other cause than the multiplicity of business prevented its continuance. "Of ancient time (says Lord Coke) in cases of "difficulties, either criminal or civil, *the reasons* "*and causes* of the judgment were set down "*upon the record*, and so continued in the "reigns of Ed. I. and Ed. II. and then there "was no need of reports; but in the reign of "Ed. III. (when the law was in its height) the "causes and reasons of judgments, in respect "of the multitude of them, are not set down in "the record, but then the *great casuists and* "*reporters of cases*, (certain grave and sad men) "published the cases, *and the reasons and causes* "*of the judgments or resolutions*, which, from "the beginning of the reign of Ed. III. and since,

" since, we have in print. But these also, " though of great credit and excellent use in " their kind, *yet far underneath the authority of* " *the Parliament Rolls, reporting the acts, judg-* " *ments, and resolutions of that highest court.*" Coke, 4 Inst. p.

Reports, though of a kind less authentic than the *Year Books* to which Coke alludes, have continued without interruption to the time in which we live. It is well known, that the elementary treatises of law, and the dogmatical treatises of English jurisprudence, whether they appear under the names of Institutes, Digests, or Commentaries, do not rest on the authority of the supreme power, like the books called the Institute, Digest, Code, and authentic collations in the Roman law. With us, doctrinal books of that description have little or no authority, other than as they are supported by the adjudged cases and reasons given at one time or other from the bench; and to these they constantly refer. This appears in Coke's Institutes, in Comyns's Digest, and in all books of that nature. To give judgment privately is to put an end to Reports; and to put an end to Reports; is to put an end to the law of England. It was fortunate for the constitution of this kingdom, that in the judicial proceedings in the case of ship money, the Judges did not then venture to depart from the ancient course. They gave and they

they argued their judgment in open court*. Their reasons were publicly given, and the reasons assigned for their judgment took away all its authority. The great historian Lord Clarendon, at that period a young lawyer, has told us, that the Judges gave as law from the bench what every man in the hall knew not to be law.

This publicity, and this mode of attending the decision with its grounds, is observed not only in the tribunals where the Judges preside in a judicial capacity individually or collectively, but where they are consulted by the Peers, on the law in all *writs of error* brought from below. In the opinion they give of the matter assigned as error, one at least of the Judges argues the questions at large. He argues them publicly, though in the chamber of Parliament; and in such a manner that every professor, practitioner, or student of the law, as well as the parties to the suit, may learn the opinions of all the Judges of all the courts upon those points, in which the Judges in one court might be mistaken.

Your Committee is of opinion that nothing better could be devised by human wisdom than argued judgments publicly delivered, for preserving unbroken the great traditionary body of the

* This is confined to the judicial opinions in Hambden's case. It does not take in all the extra-judicial opinions.

the law, and for marking, whilst that great body remained unaltered, every variation in the application and the construction of particular parts; for pointing out the ground of each variation; and for enabling the learned of the bar and all intelligent laymen to distinguish those changes made for the advancement of a more solid, equitable, and substantial justice, according to the variable nature of human affairs, a progressive experience, and the improvement of moral philosophy, from those hazardous changes in any of the ancient opinions and decisions, which may arise from ignorance, from levity, from false refinement, from a spirit of innovation, or from other motives, of a nature not more justifiable.

Your Committee, finding this course of proceeding to be concordant with the character and spirit of our judicial proceeding, continued from time immemorial, supported by arguments of sound theory, and confirmed by effects highly beneficial, could not see without uneasiness, in this great trial for Indian offences, a marked innovation. Against their reiterated requests, remonstrances, and protestations, the opinions of the Judges were always taken secretly. Not only the constitutional publicity for which we contend, was refused to the request and entreaty of your Committee; but when a noble Peer, on the 24th of June 1789, did in open court declare, that he would then propose some

questions

questions to the Judges in that place, and hoped to receive their answer openly, according to the approved good customs of that and of other courts—the Lords instantly put a stop to the further proceeding by an immediate adjournment to the chamber of Parliament. Upon this adjournment we find by the Lords Journals, that the House on being resumed, ordered, that "it should resolve itself into a Com- "mittee of the whole House, on Monday "next, to take into consideration what is the "proper manner of putting questions by the "Lords to the Judges, and of their answering "the same in judicial proceedings." The House did thereon resolve itself into a Committee, from which the Earl of Galloway, on the 29th of the same month, reported as follows: "That the House has, in the Trial of "Warren Hastings, Esquire, proceeded in a re- "gular course in the manner of propounding "their questions to the Judges in the chamber "of Parliament, and in receiving their answers "to them in the same place." The resolution was agreed to by the Lords; but the protest (as below)* was entered thereupon, and supported by strong arguments.

Your

* *Dissentient.*

1st. Because, by consulting the Judges out of court in the absence of the parties, and with shut doors, we have deviated from

Your Committee remark, that this resolution states only, that the House had proceeded in this

from the most approved, and almost uninterrupted, practice of above a century and a half, and established a precedent not only destructive of the justice due to the parties at our bar, but materially injurious to the rights of the community at large, who in cases of impeachments are more peculiarly interested that all proceedings of this high Court of Parliament should be open and exposed, like all other courts of justice, to public observation and comment, in order that no covert and private practices should defeat the great ends of public justice.

2dly. Because, from private opinions of the Judges, upon private statements, which the parties have neither heard nor seen, grounds of a decision will be obtained, which must inevitably affect the cause at issue at our bar; this mode of proceeding seems to be a violation of the first principle of justice, inasmuch as we thereby force and confine the opinions of the Judges to our private statement; and through the medium of our subsequent decision we transfer the effect of those opinions to the parties, who have been deprived of the right and advantage of being heard by such private, though unintended, transmutation of the point at issue.

3dly. Because the prisoners who may hereafter have the misfortune to stand at our bar will be deprived of that consolation which the Lord High Steward Nottingham conveyed to the prisoner, Lord Cornwallis, viz. "That the Lords have "that tender regard of a prisoner at the bar, that they will "not suffer a case to be put in his absence, lest it should pre-"judice him by being wrong stated."

4thly. Because unusual mystery and secrecy in our judicial proceedings must tend either to discredit the acquittal of the prisoner, or render the justice of his condemnation doubtful.

PORCHESTER.
SUFFOLK AND BERKSHIRE.
LOUGHBOROUGH.

this secret manner of propounding questions to the Judges, and of receiving their answers during the trial, and on matters of debate between the parties, " in a regular course." It does not assert that another course would not have been *as* regular. It does not state either judicial convenience, principle, or body of precedents for that *regular course.* No such body of precedents appear on the Journal that we could discover. Seven-and-Twenty, at least, in a regular series, are directly contrary to this regular course. Since the æra of the 29th of June 1789, no one question has been admitted to go publicly to the Judges.

This determined and systematic privacy was the more alarming to your Committee, because the questions did not (except in that case) originate from the Lords for the direction of their own conscience. These questions, in some material instances, were not made or allowed by the parties at the bar, nor settled in open court, but differed materially from what your managers contended was the true state of the question, as put and argued by them. They were such as the Lords thought proper to state for them. Strong remonstrances produced some alteration in this particular; but even after these remonstrances, several questions were made, on statements which the managers never made nor admitted.

Your

Your Committee does not know of any precedent before this, in which the Peers, on a proposal of the Commons, or of a less weighty person before their Court, to have the cases publicly referred to the Judges, and their arguments and resolutions delivered in their presence, absolutely refused. The very few precedents of such private reference on Trials, have been made, as we have observed already, sub silentio, and without any observation from the parties. In the precedents we produce, the determination is accompanied with its reasons, and the publicity is considered as the clear undoubted right of the parties.

Your Committee, using their best diligence, have never been able to form a clear opinion upon the ground and principle of these decisions. The mere result upon each case decided by the Lords, furnished them with no light from any principle, precedent, or foregone authority of law or reason, to guide them with regard to the next matter of evidence which they had to offer, or to discriminate what matter ought to be urged, or to be set aside; your Committee not being able to divine, whether the particular evidence, which, upon a conjectural principle, they might choose to abandon, would not appear to this House, and to the judging world at large, to be

admissible, and possibly decisive proof. In these straights they had and have no choice, but either wholly to abandon the prosecution, and of consequence to betray the trust reposed in them by this House, or to bring forward such matter of evidence as they are furnished with from sure sources of authenticity, and which in their judgment, aided by the best advice they could obtain, is possessed of a moral aptitude juridically to prove or to illustrate the Case which the House had given them in charge.

MODE OF PUTTING THE QUESTIONS.

When your Committee came to examine into those private opinions of the Judges, they found, to their no small concern, that the mode both of putting the questions to the Judges, and their answers, was still more unusual and unprecedented than the privacy with which those questions were given and resolved.

This mode strikes, as we apprehend, at the vital privileges of the House. For, with the single exception of the first question put to the Judges in 1788, the case being stated, the questions are raised directly, specifically, and by name, on those privileges; that is, *what evidence is it competent for the managers of the House of Commons to produce?* We conceive, that it was not

not proper, *nor justified by a single precedent*, to refer to the Judges of the inferior Courts any question, and still less for them to decide in their answer, of what is or is not competent for the House of Commons, or for any Committee acting under their authority, to do, or not to do, in any instance or respect whatsoever. This new and unheard-of course can have no other effect than to subject to the discretion of the Judges the law of Parliament and the privileges of the House of Commons, and in a great measure the judicial privileges of the Peers themselves; any intermeddling in which on their part, we conceive to be a dangerous and unwarrantable assumption of power. It is contrary to what has been declared by Lord Coke himself, in a passage before quoted, to be the duty of the Judges; and to what the Judges of former times have confessed to be their duty, on occasions to which he refers in the time of Henry the Sixth. And we are of opinion, that the conduct of those sages of the law, and others their successors, who have been thus diffident and cautious in giving their opinions upon matters concerning Parliament, and particularly on the privileges of the House of Commons, was laudable in the example, and ought to be followed; particularly the principles upon which the Judges declined

to give their opinions in the year 1614. It appears by the journals of the Lords, that a question concerning the law relative to impositions having been put to the Judges, the proceeding was as follows: "Whether the Lords, the "Judges, shall be heard deliver their opinion "touching the point of impositions, before "further consideration be had of answer to "be returned to the Lower House, concern-"ing the message from them lately received." "Whereupon the number of the Lords, re-"quiring to hear the Judges opinions by say-"ing "*Content*," exceeding the others which "said "*Non Content*," the Lords, the Judges, "so desiring were permitted to withdraw them-"selves into the Lord Chancellor's private rooms; "where having remained awhile, and advised "together, they returned into the House, and "having taken their places, and standing dis-"covered, did by the mouth of the Lord Chief "Justice of the King's Bench, humbly desire to "be forborne at this time, in this place, to "deliver any opinion in this case, for many "weighty and important reasons, which his "Lordship delivered with great gravity and "eloquence; concluding, that himself and his "brethren are upon particulars in judicial course "to speak and judge between the King's Ma-

"jesty

" jesty and his people, and likewise between his " Highness's subjects, and in no case to be " disputants on any side."

Your Committee do not find any thing which, through inadvertence or design, had a tendency to subject the law and course of Parliament to the opinions of the Judges of the inferior courts, from that period until the 1st of James the Second. The trial of Lord Delamere for high treason was had by special commission before the Lord High Steward: It was before the Act which directs that *all* Peers should be summoned to such trials. This was not a trial in full Parliament, in which case it was then contended for, that the Lord High Steward was the Judge of the law, presiding in the court, but had no vote in the verdict; and that the Lords were triers only, and had no vote in the judgment of the law. This was looked on as the course, where the trial was not in full Parliament, in which latter case, there was no doubt but that the Lord High Steward made a part of the body of the triers, and that the whole House was the Judge *. In this cause, after the evidence for the crown had been closed, the prisoner prayed the court to adjourn. The Lord High Steward doubted his

* See the Lord High Steward's speech on that head, 1st J. II.

his power to take that step in that stage of the trial; and the question was, "Whether, the trial "not being in full Parliament, when the prisoner "is upon his trial, and evidence for the King is "given, the Lords being (as it may be termed) "charged with the prisoner, the Peers may "separate for a time, which is the consequence "of an adjournment." The Lord High Steward doubted of his power to adjourn the court. The case was evidently new, and his Grace proposed to have the opinion of the Judges upon it. The Judges, in consequence, offering to withdraw into the Exchequer chamber, Lord Falconberg "insisted that the question "concerned the privilege of the Peerage only, "and conceived that the *Judges are not con-* "*cerned to make any determination in that* "*matter; and being such a point of privilege,* "*certainly the inferior courts have no right to* "*determine it.*" It was insisted, therefore, that the Lords Triers should retire with the Judges. The Lord High Steward thought differently, and opposed this motion; but finding the other opinion generally prevalent, he gave way, and the Lords Triers retired, taking the Judges to their consult. When the Judges returned, they delivered their opinion in *open court.* Lord Chief Justice *Herbert* spoke for himself and the

the rest of the Judges. After observing on the novelty of the case, with a temperate and becoming reserve with regard to the rights of Parliaments, he marked out the limits of the office of the inferior Judges on such occasions, and declared, " *All that we, the Judges, can do,* " *is to acquaint your Grace and the noble Lords* " *what the law is in the inferior courts in cases of* " *the like nature,* and the reason of the law in " those points, and *then leave the jurisdiction of* " *the court to its proper judgment.*" The Chief Justice concluded his statement of the usage below, and his observations on the difference of the cases of a Peer tried in full Parliament, and by a special commission, in this manner: " Upon the whole matter, my Lords, whether " the Peers, being judges in the one and not in " the other instance, alters the case, or whether " the reason of the law in inferior courts, why " the Jury are not permitted to separate until " they have discharged themselves of their ver- " dict, may have any influence on this case, " *where that reason seems to fail,* the prisoner " being to be tried by men of unquestionable " honour, *we cannot presume so far as to make* " *any determination, in a case which is both new* " *to us, and of great consequence in itself*; but " think it the proper way for *us,* having laid

" matters

" matters as we conceive them before your " Grace and my Lords, *to submit the jurisdiction* " *of your own court to your own determination.*"

It appears to your Committee, that the Lords, who stood against submitting the course of their high court to the inferior Judges, and that the Judges, who, with a legal and constitutional discretion, declined giving any opinion in this matter, acted as became them; and your Committee sees no reason why the Peers, at this day, should be less attentive to the rights of their court, with regard to an exclusive judgment on their own proceedings, or to the rights of the Commons acting as accusers for the whole Commons of Great Britain in that court, or why the Judges should be less reserved in deciding upon any of these points of high parliamentary privilege, than the Judges of that and the preceding periods. This present case is a proceeding in full Parliament, and not like the case under the commission in the time of James the Second, and still more evidently out of the province of the Judges in the inferior courts.

All the precedents previous to the trial of Warren Hastings, Esquire, seem to your Committee to be uniform. The Judges had constantly refused to give an opinion on any of the powers, privileges, or competencies of either House. But

in

in the present instance your Committee has found, with great concern, a further matter of innovation. Hitherto the constant practice has been to put questions to the Judges but in the three following ways; as, 1st, A question of pure abstract law, without reference to any case, or merely upon an A. B. case stated to them. 2dly, To the legal construction of some Act of Parliament. 3dly, To report the course of proceeding in the courts below, upon an abstract case. Besides these three, your Committee knows not of a single example of any sort, during the course of any judicial proceeding at the bar of the House of Lords, whether the Prosecution has been by indictment, by information from the Attorney General, or by impeachment of the House of Commons.

In the present trial, the Judges appear to your Committee not to have given their judgment on points of law, stated as such, but to have in effect tried the cause, in the whole course of it, with one instance to the contrary.

The Lords have stated no question of general law; no question on the construction of an Act of Parliament; no question concerning the practice of the courts below. They put *the whole gross case, and matter in question, with all its circumstances, to the Judges.* They have, *for the first*

first time, demanded of them what particular person, paper, or document ought, or ought not, to be produced before them by the managers for the Commons of Great Britain:—for instance, whether, under such an article, the Bengal consultations of such a day, the examination of Rajah Nundcomar, and the like. The operation of this method is in substance, not only to make the Judges masters of the whole process and conduct of the trial, but through that medium to transfer to them the ultimate judgment on the cause itself and its merits.

The Judges attendant on the Court of Peers, hitherto have not been supposed to know the particulars and minute circumstances of the cause, and must therefore be incompetent to determine upon those circumstances. The evidence taken is not, of course, that we can find, delivered to them—nor do we find, that in fact any order has been made for that purpose, even supposing that the evidence could at all regularly be put before them. They are present in court, not to hear the trial, but solely to advise in matter of law—they cannot take upon themselves to say any thing about the Bengal consultations, or to know any thing of Rajah Nundcomar, of Kelleram, or of Mr. Francis, or Sir John Clavering.

That

That the House may be the more fully enabled to judge of the nature and tendency of thus putting the question *specifically, and on the gross case*, your Committee thinks fit here to insert one of those questions, reserving a discussion of its particular merits to another place. It was stated on the 22d of April 1790, "On that day "the managers proposed to shew that Kelleram "fell into great balances with the East India "Company, in consequence of his appointment;" —It is so stated in the printed Minutes (p. 1206). But the real tendency and gist of the proposition is not shewn.—However the question was put, "whether it be or be not competent *to the* "*managers for the Commons to give evidence* "*upon the charge in the 6th article, to prove* "that the rent which the defendant, Warren "Hastings, Esquire, let the lands mentioned in "the said 6th article of charge to Kelleram, fell "into arrear and was deficient; and whether, "if proof were offered that the rent fell into "arrear immediately after the letting, the "evidence in that case would be competent? The Judges answered on the 27th of the said month, as follows: "*It is not competent for the* "*managers for the House of Commons* to give "evidence upon the charge in the 6th article, "to prove that the rent at which the defendant, "Warren Hastings, let the lands in the said

"6th

inconveniencies and mischiefs may hereafter arise from a practice in the House of Lords, of considering itself as unable to act without the Judges of the inferior courts, of implicitly following their dictates, of adhering with a literal precision to the very words of their responses, and of putting them to decide on the competence of the managers for the Commons—the competence of the evidence to be produced—who are to be permitted to appear,—what questions are to be asked of witnesses,—and indeed, parcel by parcel, on the whole of the gross case before them; as well as to determine upon the order, method, and process of every part of their proceedings. The Judges of the inferior courts are by law rendered independent of the crown. But this, instead of a benefit to the subject, would be a grievance, if no way was left of producing a responsibility. If the Lords cannot or will not act without the Judges, and if (which God forbid!) the Commons should find it at any time hereafter necessary to impeach them before the Lords; this House would find the Lords disabled in their functions, fearful of giving any judgment on matter of law, or admitting any proof of fact without them; [the Judges] and having once assumed the rule of proceeding and practice below as their rule, they must at every

every instant resort, for their means of judging, to the authority of those whom they are appointed to judge.

Your Committee must always act with regard to men as they are. There are no privileges or exemptions from the infirmities of our common nature. We are sensible, that all men, and without any evil intentions, will naturally wish to extend their own jurisdiction, and to weaken all the power by which they may be limited and controlled. It is the business of the House of Commons to counteract this tendency. This House had given to its managers no power to abandon its privileges, and the rights of its constituents. They were themselves as little disposed as authorized to make this surrender. They are members of this House, not only charged with the management of this Impeachment, but partaking of a general trust, inseparable from the Commons of Great Britain in Parliament assembled, one of whose principal functions and duties it is, to be observant of the courts of justice, and to take due care that none of them, from the lowest to the highest, shall pursue new courses unknown to the laws and constitution of this kingdom, or to equity, sound legal policy, or substantial justice. Your Committee were not sent into Westminster Hall for the purpose of contributing in their persons, and

under the authority of the House, to change the course or law of Parliament, which had continued unquestioned for at least four hundred years. Neither was it any part of their mission to suffer precedents to be established, with relation to the law and rule of evidence, which tended in their opinion to shut up for ever all the avenues to justice. They were not to consider a rule of evidence as a means of concealment. They were not, without a struggle, to suffer any subtleties to prevail, which would render a process in Parliament, not the terror, but the protection of all the fraud and violence arising from the abuse of British power in the East. Accordingly, your Managers contended with all their might, as their predecessors in the same place had contended with more ability and learning, but not with more zeal and more firmness, against those dangerous innovations as they were successively introduced: they held themselves bound constantly to protest, and in one or two instances they did protest, in discourses of considerable length, against those private, and for what they could find, unargued judicial opinions, which must, as they fear, introduce by degrees the miserable servitude which exists where the law is uncertain or unknown.

DEBATES ON EVIDENCE.

THE chief debates at the bar, and the decisions of the Judges (which we find in all cases implicitly adopted, in all their extent, and without qualification, by the Lords) turned upon *evidence*. Your Committee, before the trial began, were apprized, by discourses which prudence did not permit them to neglect, that endeavours would be used to embarrass them in their proceedings by exceptions against evidence; that the judgments and opinions of the courts below would be resorted to on this subject; that there the rules of evidence were precise, rigorous and inflexible; and that the counsel for the criminal would endeavour to introduce the same rules, with the same severity and exactness, into this trial. Your Committee were fully assured, and were resolved strenuously to contend, that no doctrine or rule of law, much less the practice of any court, ought to have weight or authority in Parliament, further than as such doctrine, rule, or practice, is agreeable to the proceedings in Parliament, or hath received the sanction of approved precedent there; or is founded on the immutable principles of substantial justice, without which, your Committee readily agrees, no practice in any court, high or low, is proper or fit to be maintained.

In this preference of the rules observed in the high court of Parliament, pre-eminently superior to all the rest, there is no claim made, which the inferior courts do not make, each with regard to itself. It is well known, that the rules of proceedings in these courts vary, and some of them very essentially; yet the usage of each court is the law of the court, and it would be vain to object to any rule in any court, that it is not the rule of another court. For instance, as a general rule, the Court of King's Bench, on trials by jury, cannot receive depositions, but must judge by testimony *vivâ voce*. The rule of the Court of Chancery is not only not the same, but it is the reverse, and Lord Hardwicke ruled accordingly: "The constant and "established proceedings of this court," said this great magistrate, "are on written evidence, "like the proceedings on the civil and canon "law. This is the course of the court, and the "course of the court is the law of the court." —Atkyns, Vol. I. p. 446.

Your Managers were convinced, that one of the principal reasons, for which this cause was brought into Parliament, was the danger that in inferior courts their rule would be formed naturally upon their ordinary experience, and the exigencies of the cases which in ordinary course came before them. This experience, and the

exigencies

exigencies of these cases, extend little further than the concerns of a people comparatively in a narrow vicinage—a people of the same or nearly the same language, religion, manners, laws and habits—With them, an intercourse of every kind was easy.

These rules of law in most cases, and the practice of the courts in all, could not be easily applicable to a people separated from Great Britain by a very great part of the globe; separated by manners, by principles of religion, and of inveterate habits as strong as nature itself, still more than by the circumstance of local distance. Such confined and inapplicable rules would be convenient indeed to oppression, to extortion, bribery, and corruption, but ruinous to the people, whose protection is the true object of all tribunals, and of all their rules. Even English Judges in India, who have been sufficiently tenacious of what they considered as the rules of English courts, were obliged, in many points, and particularly with regard to evidence, to relax very considerably, as the civil and politic government has been obliged to do in several other cases, on account of insuperable difficulties arising from a great diversity of manners, and from what may be considered as a diversity, even in the very constitution of their minds: instances of which your Committee will subjoin in a future Appendix.

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Another great cause, why your Committee conceived this House had chosen to proceed, in the High Court of Parliament, was because the inferior courts were habituated, with very few exceptions, to try men for the abuse only of their individual and natural powers, which can extend but a little way. Before them, offences, whether of fraud or violence, or both, are, for much the greater part, charged upon persons of mean and obscure condition. Those unhappy persons are so far from being supported by men of rank and influence, that the whole weight and force of the community is directed against them. In this case, they are in general objects of protection as well as of punishment; and the course perhaps ought, as it is *commonly* said to be, not to suffer any thing to be applied to their conviction beyond what the strictest rules will permit. But in the cause which your Managers have in charge, the circumstances are the very reverse to what happens in the cases of mere personal delinquency, which come before the inferior courts. These courts have not before them persons who act, and who justify their acts, by the nature of a despotical and arbitrary power. The abuses, stated in our impeachment, are not those of mere individual, natural faculties, but the abuses of civil and political authority. The offence is that of one, who has carried with him in the perpetration of his

crimes, whether of violence or of fraud, the whole force of the state;—who, in the perpetration and concealment of offences, has had the advantage of all the means and powers given to Government for the detection and punishment of guilt, and for the protection of the people. The people themselves, on whose behalf the Commons of Great Britain take up this remedial and protecting prosecution, are naturally timid. Their spirits are broken by the arbitrary power usurped over them, and claimed by the delinquent as his law. They are ready to flatter the power which they dread. They are apt to look for favour from their Governors, by covering those vices in the predecessor, which they fear the successor may be disposed to imitate. They have reason to consider complaints as means not of redress, but of aggravation to their sufferings; and when they shall ultimately hear that the nature of the British laws, and the rules of its tribunals, are such as by no care or study either they, or even the Commons of Great Britain, who take up their cause, can comprehend, but are such as in effect and operation leave them unprotected, and render those who oppress them secure in their spoils, they must think still worse of British justice than of the arbitrary power of the Company's servants, which hath been ex-

ercised to their destruction. They will be for ever, what, for the greater part they have hitherto been, inclined to compromise with the corruption of the magistrates, as a screen against that violence, from which the laws afford them no redress.

For these reasons, you Committee did, and do, strongly contend, that the Court of Parliament ought to be open with great facility to the production of all evidence, except that, which the precedents of Parliament teach them authoritatively to reject, or which hath no sort of natural aptitude directly or circumstantially to prove the case. They have been and are invariably of opinion, That the Lords ought to *enlarge (and not to contract) the rules of evidence, according to the nature and difficulties of the case*, for redress to the injured, for the punishment of oppression, for the detection of fraud; and, that they ought above all, to prevent what is the greatest dishonour to all laws, and to all tribunals—the failure of justice. To prevent the last of these evils all courts in this and all countries have constantly made all their maxims and principles concerning testimony to conform; although such courts have been bound undoubtedly by stricter rules, both of form and of prescript cases, than the sovereign jurisdiction exercised by the Lords on the impeachment

ment of the Commons ever has been, or ever ought to be. Therefore your Committee doth totally reject any rules, by which the practice of any inferior court is affirmed as a directory guide to an higher, especially where the forms and the powers of the judicature are different, and the objects of judicial enquiry are not the same.

Your Committee conceives that the trial of a cause is not in the arguments or disputations of the prosecutors and the counsel, but in the *evidence*; and that to refuse evidence is to refuse to hear the cause: nothing, therefore, but the most clear and weighty reasons, ought to preclude its production. Your Committee conceives that, when evidence, on the face of it relevant, that is, connected with the party and the charge, was denied to be competent, *the burthen lay upon those who opposed it*, to set forth the authorities, whether of positive statute, known recognized maxims and principles of law, passages in an accreditated institute, code, digest, or systematic treatise of laws, or some adjudged cases, wherein the courts have rejected evidence of that nature. No such thing ever (except in one instance, to which we shall hereafter speak) was produced at the bar, nor (that we know of) produced by the Lords in their debates, or by the Judges in the opinions by

by them delivered. Therefore, for any thing which as yet appears to your Committee to the contrary, these responses and decisions were, in many of the points, not the determinations of any law whatsoever, but mere arbitrary decrees, to which we could not without solemn protestation submit.

Your Committee, at an early period, and frequently since the commencement of this trial, have neglected no means of research, which might afford them information concerning these supposed strict and inflexible rules of proceeding, and of evidence, which appeared to them destructive of all the means and ends of justice:—and, first, they examined carefully the rolls and journals of the House of Lords, as also the printed trials of cases before that court.

rds urnals, ol. IV. 204. n. 1641.

Your Committee finds but one instance, in the whole course of parliamentary impeachments, in which evidence offered by the Commons, has been rejected on the plea of inadmissibility or incompetence. This was in the case of Lord Strafforde's trial; when the copy of a warrant (the same not having any attestation to authenticate it as a true copy) was, on deliberation, not admitted; and your Committee thinks, as the case stood, with reason.—But even in this one instance, the Lords seemed

ish. Trial Lord rafforde, 430.

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to shew a marked anxiety not to narrow too much the admissibility of evidence, for they confined their determination "to this indi- "vidual case," as the Lord Steward reported their resolution; and, he adds, "they conceive "this to be no impediment or failure in the "proceeding, because the truth and verity of "it would depend on the first general power "given to execute it, which they who manage "the evidence for the Commons say they could "prove."—Neither have objections to evidence offered by the prisoner been very frequently made, nor often allowed when made.—In the same case of Lord Strafforde, two books produced by his lordship, without proof by whom they were written, were rejected (and on a clear principle) "as being private books, and no "records." On both these occasions, the questions were determined by the Lords alone, without any resort to the opinions of the Judges. In the impeachments of Lord Strafforde, Dr. Sacheverell, and Lord Wintoun, no objection to evidence appears in the Lords Journals to have been pressed, and not above one taken, which was on the part of the Managers.

Lords Journals, Vol. IV. p. 210.

Several objections were indeed taken to evidence in Lord Macclesfield's trial. They were made on the part of the Managers, except in two instances, where the objections were made by the

Lords Journals, Vol. XXII. p. 586 to 596, fol. 1716.

the witnesses themselves. They were all determined (those started by the Managers in their favour) by the Lords themselves, without any reference to the Judges. In the discussion of one of them, a question was stated for the Judges concerning the law in a similar case upon an information in the court below; but it was set aside by the previous question.

Lords Journals, Vol. XXII. p. 536 to 546. An. 1725.

On the impeachment of Lord Lovat, no more than one objection to evidence was taken by the Managers, against which Lord Lovat's counsel were not permitted to argue. Three objections on the part of the prisoner were made to the evidence offered by the Managers, but all without success. The instances of similar objections in parliamentary trials of Peers on indictments, are too few and too unimportant to require being particularized;—one, that in the case of Lord Warwick, has been already stated.

Lords Journals, Vol. XXVIII. p. 63, 65. An. 1746.

The principles of these precedents do not in the least affect any case of evidence which your Managers had to support. The paucity and inapplicability of instances of this kind, convince your Committee that the Lords have ever used some latitude and liberality in all the means of bringing information before them—nor is it easy to conceive, that, as the Lords are, and of right ought to be, judges of law and fact, many cases should occur (except those where a personal

personal *vivâ voce* witness is denied to be competent) in which a Judge, possessing an entire judicial capacity, can determine by anticipation what is good evidence, and what not, before he has heard it. When he has heard it, of course he will judge what weight it is to have upon his mind, or whether it ought not entirely to be struck out the proceedings.

Your Committee, always protesting, as before, against the admission of any law, foreign or domestic, as of authority in Parliament, further than as written reason, and the opinion of wise and informed men, has examined into the writers on the civil law, ancient and more recent, in order to discover what those rules of evidence, in any sort applicable to criminal cases, were, which were supposed to stand in the way of the trial of offences committed in India.

They find, that the term evidence, *evidentia*, from whence our's is taken, has a sense different in the Roman law, from what it is understood to bear in the English jurisprudence. The term most nearly answering to it in the Roman, being *probatio*, proof; which, like the term *evidence*, is a generick term, including every thing by which a doubtful matter may be rendered more certain to the Judge; or, as Gilbert expresses it, every matter is evidecce which amounts to the proof of the point in question.

Gilbert's Law of Evidence, p. 43.

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On the general head of evidence or proof, your Committee finds, that much has been written by persons learned in the Roman law, particularly in modern times; and that many attempts have been made to reduce to rules the principles of evidence or proof, a matter which by its very nature seems incapable of that simplicity, precision, and generality, which are necessary to supply the matter, or to give the form to a rule of law. Much learning has been employed on the doctrine of indications and presumptions, in their books; far more than is to be found in our law.—Very subtile disquisitions were made, on all matters of jurisprudence in the times of the classical civil law, by the followers of the Stoick school. In the modern school of the same law, the same course was taken by Bartolus, Baldus, and the civilians who followed them, before the complete revival of literature. All the discussions to be found in those voluminous writings, furnish undoubtedly an useful exercise to the mind, by methodizing the various forms, in which one set of facts, or collection of facts, or the qualities or demeanour of persons, reciprocally influence each other; and, by this course of juridical discipline, they add to the readiness and sagacity of those who are called to plead or to judge. But as human affairs and human actions are not of a metaphysical

a metaphysical nature, but the subject is concrete, complex, and moral, they cannot be subjected (without exceptions which reduce it almost to nothing) to any certain rule. Their rules with regard to competence were many and strict, and our lawyers have mentioned it to their reproach. "The civilians (it has been observed) "differ in nothing more than admitting evi- "dence; for they reject histriones, &c. and "whole tribes of people." But this extreme rigour as to competency, rejected by our law, is not found to extend to the *genus* of evidence, but only to a particular species—personal witnesses. Indeed, after all their efforts to fix these things by positive and inflexible maxims, the best Roman lawyers in their best ages were obliged to confess, that every case of evidence rather formed its own rule, than that any rule could be adapted to every case: The best opinions, however, seem to have reduced the admissibility of witnesses to a few heads.—"For "if," said Calistratus, in a passage preserved to us in the Digest, "the testimony is free from "suspicion, either on account of the quality of "the *person*, namely, that he is in a reputable "situation; or for *cause*, that is to say, that the "testimony given is not for reward, nor favour, "nor for enmity, such a witness is admissible." This first description goes to *competence*; between

Atkyns, Rep. Omichund versus Barker, Vol. I. p. 37.

between which and *credit*, Lord Hardwicke justly says the discrimination is very nice: the other part of the text shews their anxiety to reduce credibility itself to a fixed rule. It proceeds, therefore, " his sacred Majesty, Hadrian, " issued a rescript to Vivius Varus, lieutenant " of Cilicia, to this effect, That he who sits in " judgment is the most capable of determining " what credit is to be given to witnesses." The words of the letter of rescript are as follow: " You ought best to know what credit is to be " given to witnesses,—who, and of what dig- " nity, and of what estimation they are, whether " they seem to deliver their evidence with sim- " plicity and candour—whether they seem to " bring a formed and premeditated discourse— " or whether on the spot they give probable " matter in answer to the questions that are put " to them." And there remains a rescript of the same prince to Valerius Varus on the bringing out the credit of witnesses. This appears to go more to the *general* principles of evidence. It is in these words: " What evidence, and in " what measure or degree, shall amount to " proof in each case, can be defined in no man- " ner whatsoever that is sufficiently certain. " For, though not always, yet frequently, the " truth of the affair may appear without any " matter of public record. — In some cases,

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" the number of the witnesses, in others their
" dignity and authority, is to be weighed; in
" others, concurring public fame tends to con-
" firm the credit of the evidence in question.
" This alone I am able, and in a few words, to
" give you as my determination, that you ought
" not too readily to bind yourself to try the
" cause upon any one description of evidence; Digest. I XXII. part 5.
" but you are to estimate by your own discre-
" tion what you ought to credit, or what appears
" to you not to be established by proof suffi-
" cient."

The modern writers on the civil law have likewise much matter on this subject, and have introduced a strictness, with regard to personal testimony, which our particular jurisprudence has not thought it at all proper to adopt. In others we have copied them more closely. They divide evidence into two parts, in which they do not differ from the ancients. 1st. What is evidence, or proof by itself? 2dly. What is presumption, " which is a probable conjecture
" from a reference to something which, coming
" from marks and tokens ascertained, shall be
" taken for truth, until some other shall be ad-
" duced?" Again, they have laboured particularly to fix rules for presumptions, which they divide into, 1. Violent and necessary.—2. Probable.—3, and lastly, Slight and rash. But,

finding that this head of presumptive evidence (which makes so large a part with them and with us in the trial of all causes, and particularly criminal causes) is extremely difficult to ascertain, either with regard to what shall be considered as exclusively creating any of these three degrees of presumption, or what facts, and how proved,—and what marks and tokens may serve to establish them,—even those civilians, whose character it is to be subtle to a fault, have been obliged to abandon the task—and have fairly confessed, that the labours of writers to fix rules for these matters have been vain and fruitless. One of the most able of them has said, "That the doc-
"tors of the law have written nothing of value
"concerning presumptions; nor is the subject
"matter such as to be reduced within the pre-
"scribed limit of any certain rules. In truth,
"it is from the actual existing case, and from
"the circumstances of the persons, and of the
"business, that we ought (under the guidance
"of an incorrupt judgment of the mind, which
"is called an equitable discretion) to determine
"what presumptions or conjectural proofs are
"to be admitted as rational, or rejected as false,
"or on which the understanding can pronounce
"nothing, either the one way or the other."

It is certain, that whatever over strictness is to be found in the older writers on this law,

with regard to evidence, it chiefly related to the mere competency of witnesses; yet even here the rigour of the Roman lawyers relaxed on the necessity of the case. Persons who kept houses of ill fame were with them incompetent witnesses; yet among the maxims of that law, the rule is well known of "*Testes lupanares in re* "*lupanari.*"

In ordinary cases, they require two witnesses to prove a fact; and therefore they held, "that "if there be but one witness, and no probable "grounds of presumption of some kind *(nulla* "*argumenta)* that one witness is by no means to "be heard;" and it is not inelegantly said in that case, *Non jus deficit sed probatio.* "the "faliure is not in the law, but in the proof." But if other grounds of presumption appear, one witness is to be heard; "for it is not necessary "that one crime should be established by one "sort of proof only, as by witnesses, or by do- "cuments or by presumptions; all the modes of "evidence may be so conjoined, that where "none of them alone would affect the prisoner, "all the various concurrent proofs should over- "power him, like a storm of hail."—This is held particularly true in cases where crimes are secret, and detection difficult. The necessity of detecting and punishing such crimes superseded, in the soundest authors, this the-

oretick aim at perfection, and obliged technical science to submit to practical expedience. *In re criminali*, said the rigourists, *Probationes debent esse evidentes et luce meridianâ clariores*; and so undoubtedly it is in offences which admit such proof. But reflection taught them, that even their favourite rules of incompetence must give way to the exigencies of distributive justice. One of the best modern writers on the Imperial Criminal Law, particularly as practised in Saxony (Carpzovius) says, "This alone "I think it proper to remark, that even incom- "petent witnesses are sometimes admitted, if "otherwise the truth cannot be got at; and "this particularly in facts and crimes which are "of difficult proof;"—and for this doctrine he cites Farinacius, Mascardus, and other eminent civilians who had written on evidence.—He proceeds afterwards—"However, this is to be taken "with a caution, that the impossibility of other- "wise discovering the truth, is not construed "from hence, that other witnesses were not "actually concerned, but that from the nature of "the crime, or from regard had to the place and "time, other witnesses could not be present." Many other passages from the same authority, and from others to a similar effect, might be added: We shall only remark shortly, that Gaill, a writer on the practice of that law

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the most frequently cited in our own courts, gives the rule more in the form of a maxim; "That the law is contented with such proof "as *can* be made, if the subject *in its nature* "is difficult of proof." And the same writer, in another passage, refers to another still more general maxim (and a sound maxim it is) that the power and means of proof ought not be narrowed but enlarged, that the truth may not be concealed:—*Probationum facultas non augustari, sed ampliari debeat, ne veritas occultetur.* Lib. II Obs. 1 Lib. I. Obs. 9 §. 7.

On the whole, your Committee can find nothing in the writings of the learned in this law, any more than they could discover any thing in the law of Parliament, to support any one of the determinations given by the Judges, and adopted by the Lords, against the evidence which your Committee offered, whether direct and positive, or merely (as for the greater part it was) circumstantial, and produced as a ground to form legitimate presumption against the defendant: nor, if they were to admit (which they do not) this civil law to be of authority in furnishing any rule in an impeachment of the Commons, more than as it may occasionally furnish a principle of reason on a new or undetermined point, do they find any rule, or any prin-

ciple, derived from that law, which could or ought to have made us keep back the evidence which we offered. On the contrary, we rather think those rules and principles to be in agreement with our conduct.

As to the canon law, your Committee, finding it to have adopted the civil law with no very essential variation, does not feel it necessary to make any particular statement on that subject.

Your Committee then came to examine into the authorities in the English law, both as it has prevailed for many years back, and as it has been recently received in our courts below. They found on the whole the rules rather less strict, more liberal, and less loaded with positive limitations, than in the Roman law. The origin of this latitude may perhaps be sought in this circumstance, which we know to have relaxed the rigour of the Roman law—Courts in England do not judge, upon evidence, *secundum allegata et probata*, as in other countries and under other laws they do, but upon verdict. By a fiction of law, they consider the Jury as supplying in some sense the place of testimony. One witness (and for that reason) is allowed sufficient to convict, in cases of felony, which in other laws is not permitted.

In ancient times it has happened to the law

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of England (as in pleading, so in matter of evidence,) that a rigid strictness in the application of technical rules, has been more observed than at present it is. In the more early ages, as the minds of the Judges were in general less conversant in the affairs of the world, as the sphere of their jurisdiction was less extensive, and as the matters which came before before them were of less variety and complexity, the rule being in general right, not so much inconvenience on the whole was found from a literal adherence to it, as might have arisen from an endeavour towards a liberal and equitable departure, for which further experience, and a more continued cultivation of equity as a science, had not then so fully prepared them. —In those times, that judicial policy was not to be condemned. We find too, that probably from the same cause, most of their doctrine leaned towards the restriction; and the old lawyers being bred, according to the then philosophy of the schools, in habits of great subtilty and refinement of distinction, and having once taken that bent, very great acuteness of mind was displayed in maintaining every rule, every maxim, every presumption of law creation, and every fiction of law, with a punctilious exactness; and this seems to have been the course which laws have taken

in every nation*. It was probably from this rigour, and from a sense of its pressure, that, at an early period of our law, far more causes of criminal jurisdiction were carried into the House of Lords, and the council board, where laymen were Judges, than can or ought to be at present.

As the business of courts of equity became more enlarged, and more methodical; as Magistrates, for a long series of years, presided in the Court of Chancery, who were not bred to the common law; as commerce, with its advantages and its necessities, opened a communication more largely with other countries; as the law of nature and nations (always a part of the law of England) came to be cultivated; as an increasing empire; as new views and new combinations of things were opened, this antique rigour and over-done severity gave way to the accommodation of human concerns, for which rules were made, and not human concerns made to bend to them.

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At length, Lord Hardwicke, in a case the most solemnly argued of any within the memory of

* Antiqua jurisprudentia aspera quidem illa, tenebricosa, et tristis, non tam in æquitate, quam in verborum superstitione fundata, eaque Ciceronis ætatem fere attigit, mansitque annos circiter 350. Quæ hanc excepit, viguitque annos fere 79, superiori longe humanior; quippe quæ magis utilitate communi, quam potestate verborum, negotia moderaretur.—Gravina, p. 86.

of man, with the aid of the greatest learning at the bar, and with the aid of all the learning on the bench, both bench and bar being then supplied with men of the first form, declared from the bench, and in concurrence with the rest of the Judges, and with the most learned of the long robe, the able council on the side of the old restrictive principles, making no reclamation—"That the Judges and sages of the law have laid "it down, that there is but ONE general rule "of evidence—the best that the nature of the "case will admit."—This, then, the master rule, that governs all the subordinate rules, does in reality subject itself and its own virtue and authority to the nature of the case; and leaves no rule at all of an independent, abstract, and substantive quality.—Sir Dudley Ryder (then Attorney General, afterwards Chief Justice) in his learned argument, observed —"It is extremely proper, that there should be "*some* general rules in relation to evidence; "but if exceptions are not allowed to them, it "would be better to demolish all the general "rules.—There is no general rule without ex-"ception that we know of, but this, that the "best evidence shall be admitted, which the "nature of the case will afford. I will shew, "that rules, as general as this, are broke in "upon, for the sake of allowing evidence. There

"is

" is no rule that seems more binding, than that " a man shall not be admitted an evidence in his " own case, and yet the statute of Hue and " Cry is an exception. A man's books are al- " lowed to be evidence, or, which is in sub- " stance the same, his servant's books, because " the nature of the case requires it; as in the " case of a brewer's servants.—Another general " rule, that a wife cannot be witness against " her husband, has been broke in upon in cases " of treason: That the last words of a dying " man are given in evidence, in the case of mur- " der, is also an exception to the general rule, " that a man may not be examined without oath." Such are the doctrines of this great lawyer.

Chief Justice Willes concurs with Lord Hardwicke as to dispensing with strict rules of evidence.—" Such evidence," he says, " is to be " admitted as the *necessity* of the case will allow " of; as, for instance, a marriage at Utrecht, " certified under the seal of the minister " there, and of the said town, and that they co- " habited together as man and wife, was held " to be sufficient proof that they were mar- " ried." —This learned Judge (commenting upon Lord Coke's doctrine, and Serjeant Hawkins's after him, that the oaths of Jews and Pagans were not to be taken) says, " That this no- " tion, though advanced by so great a man, is

" contrary

" contrary to religion, common sense, and com-
" mon humanity, and I think the devils, to
" whom he has delivered them, could not have
" suggested any thing worse." — The Chief Justice, admitting Lord Coke to be a great lawyer, then proceeds in very strong terms, and with marks of contempt, to condemn " his nar-
" row notions;" and he treats with as little respect or decorum the ancient authorities referred to in defence of such notions.

The principle of the departure from those rules is clearly fixed by Lord Hardwicke; he lays it down as follows: " The first ground
" Judges have gone upon in departing from
" strict rules, is absolute strict necessity. 2dly:
" A *presumed* necessity:" Of the first he gives these instances; " in the case of writings
" subscribed by witnesses, if all are dead, the
" proof of one of their hands is sufficient to
" establish the deed. Where an original is lost,
" a copy may be admitted; if no copy, then a
" proof by witnesses who have *heard* the deed;
" and yet it is a thing the law abhors, to ad-
" mit the memory of man for evidence." — This enlargement through two stages of proof, both of them contrary to the rule of law, and both abhorrent from its principles, are by this great Judge accumulated upon one another, and

are

are admitted from *necessity*, to accommodate human affairs, and to prevent that, which courts are by every possible means instituted to prevent—A FAILURE OF JUSTICE. And this necessity is not confined within the strict limits of physical causes, but is more lax, and takes in *moral, and even presumed and argumentative necessity*, a necessity which is in fact nothing more than a great degree of expediency. The law creates a fictitious necessity against the rules of evidence in favour of the convenience of trade: An exception, which on a similar principle had before been admitted in the civil law, as to mercantile causes, in which the books of the party were received to give full effect to an insufficient degree of proof, called in the nicety of their distinctions a *semiplena probatio*.

Gaill. Lib. II. Obs. 20. §. 5.

But to proceed with Lord Hardwicke;—he observes, that "a tradesman's books (that is, "the acts of the party interested, himself) are "admitted as evidence, not through *absolute* "*necessity*, but by reason of a *presumption* of "necessity *inferred* only from the nature of "commerce. No rule," continued Lord Hardwicke, "can be more settled, than that testi"mony is not to be received but upon oath;" but he lays it down, that an oath itself may be dispensed with. "There is another instance,"

says

says he, "where the lawful oath may be dis-
"pensed with, namely, where our courts admit
"evidence for the crown without oath."

In the same discussion, the Chief Baron (Parker) cited cases, in which all the rules of evidence had given way. "There is not a "more general rule," says he, "than that "hearsay cannot be admitted, nor husband and "wife as witnesses against each other; and yet "it is notorious that from necessity they have "been allowed, not an absolute necessity, but "a moral one."

It is further remarkable, in this judicial argu-gument, that exceptions are allowed not only to rules of evidence, but that the rules of evidence themselves are not altogether the same, where the subject matter varies. The Judges have, to facilitate justice, and to favour commerce, even adopted the rules of foreign laws. They have taken for granted, and would not suffer to be questioned, the regularity and justice of the proceedings of foreign courts, and they have admitted them as evidence, not only of the fact of the decision, but of the right as to its legality: where there are foreign parties interested, and in "commercial matters, the rules of evidence are "not quite the same as in other instances in "courts of justice. The case of Hue and Cry, "Brownlow, 47, a feme covert is not a lawful

"witness

" witness against her husband, except in cases " of treason, but has been admitted in civil " cases *. The testimony of a public notary is " evidence by the law of France; contracts are " made before a public notary, and no other " witness necessary. I should think it would " be no doubt at all, if it came in question " here, whether this would be a valid contract; " but a testimony from persons of that credit " and reputation would be received as a very " good proof in foreign transactions, and would " authenticate the contract."—Chro. Chal. 865.

These cases shew, that courts always govern themselves by these rules in cases of foreign transactions. To this principle Lord Hardwicke accords; and enlarging the rule of evidence by the nature of the subject, and the exigencies of the case, he lays it down—" that it is a common " and *natural* presumption, that persons of the " Gentoo religion should be principally apprized " of facts and transactions in their own country. " —As the English have only a factory in this " country, for it is in the empire of the Great " Mogul, if we should admit this evidence

" [Gentoo

* *N.B.*—In some criminal cases also, though not of treason, husband is admitted to prove an assault upon his wife, for the King, ruled by Raymond, chief justice, Trin. 11th Geo. King versus Azire. And for various other exceptions, see Buller's Nisi Prius, 285, 287.

" [Gentoo evidence on a Gentoo oath] it would " be agreeable to the genius of the law of " England." For this he cites the proceedings of our Court of Admiralty—and adopts the opinion of the author who states the precedent—" That this court will give credit to the sen- " tence of the court of admiralty in France, and " take it to be according to right, and will not " examine their proceedings; for it would be " found very inconvenient if one kingdom " should, by peculiar laws, correct the judg- " ments and proceedings of another kingdom." Such is the genius of the law of England, that these two principles of the general moral necessities of things, and the nature of the case, over-rule every other principle, even those rules which seem the very strongest. Chief Baron Parker, in answer to an objection made against the infidel deponent, " that the plaintiff ought " to have shewn that he could not have the " evidence of christians," says " that, repugnant " to natural justice, in the statute of Hue and " Cry, the robbed is admitted to be witness of " the robbery, as a moral or presumed necessity " is sufficient." The same learned magistrate, pursuing his argument in favour of liberality, in opening and enlarging the avenues to justice, does not admit " that the authority of one or

" two

" two cases is valid against reason, equity, and " convenience, the vital principles of the law." He cites Wells versus Williams. 1. Raymond 282, to shew that the necessity of trade has mollified the too rigorous rules of the old law, in their restraint and discouragement of aliens. " A Jew may sue at *this* day, but *heretofore he* " *could not*, for then they were looked upon as " enemies, but now commerce has taught the " world more humanity; and therefore held " that an alien enemy, commorant here by the " licence of the King, and under his protection, " may maintain a debt upon a bond, though he " did not come with safe conduct." So far Parker, concurring with Raymond.—He proceeds, " It was objected by the defendant's " counsel that this is a novelty, and that what " never has been done ought not to be done." The answer is, " The law of England is not " confined to particular cases; but is much " more governed by reason than by any one case " whatever. The true rule is laid down by Lord " Vaughan, fol. 37, 38, where the law, saith he, " is *known and clear*, the Judges must determine " as the law is, without regard to the inequit- " ableness or inconveniency. These defects, if " they happen in the law, can only be remedied " by Parliament—but where the law is doubtful

" and

"and not clear, the Judges ought to interpret "the law to be as is most consonant to equity, "and what is least inconvenient."

These principles of equity, convenience, and natural reason, Lord Chief Justice Lee considered in the same ruling light, not only as guides in matter of interpretation concerning law in general, but, in particular, as controllers of the whole law of evidence, which being artificial, and made for convenience, is to be governed by that convenience for which it is made, and is to be wholly subservient to the stable principles of substantial justice. "I do ap- "prehend," said that Chief Justice, "that the "rules of evidence are to be considered as ar- "tificial rules, framed by men for convenience "in Courts of Justice. This is a case that "ought to be looked upon in that light; and "I take it, that considering evidence in this way "[viz. according to natural justice] is agree- "able to the genius of the law of England."

The sentiments of Murray, then Solicitor General, afterwards Lord Mansfield, are of no small weight in themselves, and they are authority by being judicially adopted. His ideas go to the growing melioration of the law, by making its liberality keep pace with the demands of justice, and the actual concerns of the world; not restricting the infinitely diversified occasions

of men, and the rules of natural justice, within artificial circumscriptions, but conforming our jurisprudence to the growth of our commerce and of our empire. This enlargement of our concerns, he appears, in the year 1744, almost to have foreseen, and he lived to behold it. "The arguments on the other side," said that great light of the law, (that is, arguments against admitting the testimony in question from the novelty of the case) "prove nothing. Does it "follow from thence, that no witnesses can be "examined in a case that never specially existed "before? or that an action cannot be brought "in a case that never happened before? Reason "(being stated to be the first ground of all laws, "by the author of the book called Doctor and "Student) must determine the case. Therefore, "the only question is, whether upon principles "of reason, justice, and convenience, this wit-
lichund sus rker, Atkyns, upra. "ness be admissible?" "Cases in law depend "upon the *occasions* which gave rise to them. "All occasions do not arise at once: Now "a particular species of Indians appears; here-"after another species of Indians may arise. "A statute can seldom take in all cases. There-"fore the common law, that works itself pure "by rules drawn from the fountain of justice, "is for this reason superior to an Act of Par-"liament."

From

From the period of this great judgment to the trial of Warren Hastings, Esquire, the law has gone on continually working itself pure (to use Lord Mansfield's expression) by rules drawn from the fountain of justice. "General "rules," said the same person when he sat upon the bench, "are wisely established for attaining "justice with ease, certainty, and dispatch. But "the great end of them being to *do justice*, the "court will see that it be really obtained. The "courts have been more liberal of late years in "their determinations, and have more endea- "voured to attend to the real justice of the "case than formerly." On another occasion, of a proposition for setting aside a verdict, he said, "This seems to be the true way to come "at justice, and what we therefore ought to do; "for the true text is *boni judicis est ampliari* "*justitiam*, not *jurisdictionem*, as has been often "cited." In conformity to this principle, the supposed rules of evidence have, in late times and judgments, instead of being drawn to a greater degree of strictness, being greatly relaxed.

Burrow Vol. I. p. 301. Rex. v. Philips, p. 302. 306.

Wyndh v. Chet- wynd. 1 Burrow, 414.

"All evidence is according to the subject "matter to which it is applied. There is a great "deal of difference between length of time that "operates as a bar to a claim, and that which is "used only by way of evidence.—For instance, "length of time, merely as it affects evidence,

Cowper' Reports, 109. Mayor o Hull ver Horner.

" may be left to the consideration of the jury,
" and the evidence itself credited or not, ac-
" cording to the inference that may be drawn one
" way or the other, from the circumstances of
" the case." In all cases of evidence Lord Mansfield's maxim was to lean to admissibility, leaving the objections, which were made to competency, to go to credit, and to be weighed in the minds of the jury, after they had heard it.—In objections to wills, and to the testimony of witnesses to them, he thought " it clear that the
" Judges ought to lean against objections raised
" on the ground of informality."

Abrahams v. Bunn, p. 2254. The whole case well worth reading.

Lord Hardwicke had before declared, with great truth, " That the boundaries of what goes to the
" credit, and what to the competency, are very
" nice, and that the latter may be carried too far;"
and in the same case he said, " that unless the
" objection appeared to him to carry a strong
" danger of perjury, and some apparent advan-
" tage might accrue to the witness, he was always
" inclined to let it go to his credit, only in order
" to let in a proper light to the case, which
" would otherwise be shut out; and in a doubt-
" ful case, he said, it was generally his custom
" to admit the evidence, and give such direc-
" tions to the jury as the nature of the case
" might require."

King v. Bray.

It is a known rule of evidence, that an interest

in

in the matter to be supported by testimony, disqualifies a witness; yet Lord Mansfield held, "That nice objections to a remote interest, "which could not be released, though they held "in other cases, were not allowed to disqua- "lify a witness to a will, (as in the case of "parishioners having a devise to the use of the "poor of the parish for ever)." He went still further, and his doctrine tends so fully to settle the principle of departure from, or adherence to, rules of evidence, that your Committee inserts part of the argument at large. "The disability "of a witness from interest is very different "from a positive incapacity. If a deed must "be acknowledged before a Judge or Notary "Public, every other person is under a positive "incapacity to authenticate it; but objections "of interest are deductions from natural reason, "and proceed upon a presumption of too great "a bias in the mind of the witness, and the "public utility of rejecting partial testimony. "Presumptions stand no longer than till the "contrary is proved. The presumption of bias "may be taken off by shewing that the witness "has a great or a greater interest the other way, "or that he has given it up. The presumption "of public utility may be answered, by shewing "that it would be very inconvenient, under the "particular circumstances, not to receive such

Wyndh. v. Chetwynd.

" testimony. Therefore, from the course of bu-
" siness, necessity, and other reasons of expe-
" dience, *numberless exceptions* are allowed to
" the *general* rule."

These being the principles of later jurisprudence, the Judges have suffered no positive rule of evidence to counteract those principles. They have even suffered subscribing witnesses to a will, which recites the soundness of mind in the testator, to be examined to prove his insanity, even when the court received evidence to overturn that testimony, and to destroy the credit of those witnesses. Five witnesses had attested a will and codicil. They were admitted to annul the will which they had themselves attested. Objections were taken to the competency of one of the witnesses in support of the will against the testimony of its subscribing witnesses. 1st, That the witness was an executor in trust, and so liable to actions. 2dly, As having acted under the trust; whereby, if the will were set aside, he would be liable to answer for damages incurred by the sale of the deceased's chambers to a Mr. Frederick. Mr. Frederick offered to submit to a rule to release, for the sake of public justice. Those who maintained the objection cited Sidersin, a reporter of much authority, 51. 115. and 1st Keble 134. Lord Mansfield, Chief Justice, did not controvert those authorities;

but in the course of obtaining substantial justice, he treated both of them with equal contempt, though determined by Judges of high reputation. His words are remarkable: "We do not *now* "sit here to take our rules of evidence from "Sidersin and Keble." He over-ruled the objection upon more recent authorities, which, though not in similar circumstances, he considered as within the reason. The court did not think it necessary that the witness should release, as he had offered to do. "It appeared on this "trial (says Justice Blackstone) that a black "conspiracy was formed to set aside the gen-"tleman's will, without any foundation what-"ever." A prosecution against three of the testamentary witnesses was recommended, who were afterwards convicted of perjury. Had strict formalities, with regard to evidence, been adhered to in any part of this proceeding, that very black conspiracy would have succeeded; and those black conspirators, instead of receiving the punishment of their crimes, would have enjoyed the reward of their perjury.

Lord Mansfield, it seems, had been misled, in a certain case, with regard to precedents. His opinion was against the reason and equity of the supposed practice, but he supposed himself not at liberty to give way to his own wishes and opinions. On discovering his error, he con-

Burrow, 1147. Zouch ex dimiss. Woolston v. Woolston.

sidered himself as freed from an intolerable burthen, and hastened to undo his former determination. "There are no precedents," said he with some exultation, "which stand in the way "of our determining liberally, equitably, and "according to the true intention of the parties." In the same case, his learned assessor, Justice Wilmot, felt the same sentiments. His expressions are remarkable: "Courts of Law ought to "concur with Courts of Equity, in the execution "of those powers which are very convenient to "be inserted in settlements; and they ought not "to listen to nice distinctions that savour of the "schools, but to be guided by true good sense "and manly reason. After the statute of Uses, "it is much to be lamented, that the courts of "common law had not adopted all the rules and "maxims of the courts of equity. This would "have prevented the absurdity of receiving costs "in one court, and paying them in another."

Your Committee does not produce the doctrine of this particular case, as directly applicable to their charge, no more than several of the others here cited. We do not know on what precedents or principles the evidence proposed by us has been deemed inadmissible by the Judges; therefore against the grounds of this rejection, we find it difficult directly to oppose any thing. These precedent, and these doctrines are brought to shew

shew the general temper of the courts, their growing liberality, and the general tendency of all their reasonings and all their determinations to set aside all such technical subtleties, or formal rules, which might stand in the way of the discovery of truth, and the attainment of justice.—The cases are adduced for the principles they contain.

The period of the cases and arguments we have cited, was that in which large and liberal principles of evidence were more declared, and more regularly brought into system. But they had been gradually improving; and there are few principles of the later decisions which are not to be found in determinations on cases prior to the time we refer to. Not to overdo this matter, and yet to bring it with some degree of clearness before the House, your Committee will refer but to a few authorities, and those, which seem most immediately to relate to the nature of the cause entrusted to them. In Michaelmas, 11 W. III. the King *v.* the Warden of the Fleet —A witness, who had really been a prisoner, and voluntarily suffered to escape, was produced to prove the escape. To the witness it was objected, that he had given a bond to be a true prisoner, which he had forfeited by escaping: besides, he had been retaken. His testimony was allowed; and by the court, among other things,

things, it was said, In secret transactions, if any of the parties concerned are not to be, for the necessity of the third, admitted as evidence, it will be impossible to detect the practice; as in cases of the statute of Hue and Cry, the party robbed shall be a witness to charge the hundred; and in the case of Cooke v. Watts in the Exchequer, where one who had been prejudiced by the will was admitted an evidence to prove it forged *. So in the case of King v. Harris where a feme covert was admitted as a witness for *fraudulently* drawing her in, when sole, to give a warrant of attorney for confessing a judgment on an unlawful consideration, whereby execution was sued out against her husband; and Holt, Chief Justice, held, that a feme covert could not, by law, be a witness to convict one on an information; yet, in Lord Audley's case, it being a rape on her person, she was received to give evidence against him, and the court concurred with him, because it was the best evidence the nature of the thing would allow. This decision of Holt refers to others more early, and all on the same principle; and it is not of this day that this one great principle of eminent public expedience, this moral necessity, † "that crimes "should

Siderin, 431.

* In this single point Holt did not occur with the rest of the Judges.

† Interest Reipublicæ ut maleficia ne remaneant impunita.

"should not escape with impunity," has in all cases overborne all the common juridical rules of evidence—It has even prevailed over the first and most natural construction of Acts of Parliament, and that in matters of so penal a nature as high treason. It is known that statutes made, not to open and enlarge, but on fair grounds, to straiten proofs, require two witnesses in cases of high treason. So it was understood without dispute, and without distinction, until the argument of a case in the High Court of Justice, during the usurpation. It was the case of the presbyterian minister, Love, tried for high treason, against the Commonwealth, in an attempt to restore the King. In this trial, it was contended for and admitted, that one witness to one overt act, and one to another overt act of the same treason, ought to be deemed sufficient. This precedent, though furnished in times from which precedents were cautiously drawn, was received as authority throughout the whole reign of Charles the Second. It was equally followed after the Revolution; and at this day it is undoubted law. It is not so from the natural or technical rules of construction of the Act of Parliament, but from the principles of juridical policy. All the Judges who have ruled it, all the writers of credit who have written upon it, assign this reason, and this only,—That treasons being

Love's Trial, State Trials, Vol. II. p. 144. 171 to 173, and 177; and Foster's Crown Law, p. 235.

Burrow, 815. Copendal v. Brigden.

being plotted in secrecy, could in few cases be otherwise brought to punishment.

The same principle of policy has dictated a principle of relaxation, with regard to severe rules of evidence, in all cases similar, though of a lower order in the scale of criminality. It is against fundamental maxims, that an accomplice should be admitted as a witness.—But accomplices are admitted from the policy of justice, otherwise confederacies of crime could not be dissolved.

There is no rule more solid, than that a man shall not entitle himself to profit by his own testimony. But an informer, in case of highway robbery, may obtain forty pounds to his own profit by his own evidence: this is not in consequence of positive provision in the Act of Parliament—it is a provision of policy, lest the purpose of the Act should be defeated.

Now, if policy has dictated this very large construction of an Act of Parliament, concerning high treason; if the same policy has dictated exceptions to the clearest and broadest rules of evidence, in other highly penal causes; and if all this latitude is taken concerning matters for the greater part within our insular bounds;—your Committee could not, with safety to the larger and more remedial justice of the law of Parliament, admit any rules or pretended

rules,

rules, uncorrected and uncontrolled by circumstances, to prevail in a trial, which regarded offences of a nature difficult of detection, and committed far from the sphere of the ordinary practice of our courts.

If any thing of an over-formal strictness is introduced into the trial of Warren Hastings, Esquire, it does not seem to be copied from the decisions of these tribunals. It is with great satisfaction your Committee has found, that the reproach of "disgraceful subtleties," inferior rules of evidence, which prevent the discovery of truth, of forms, and modes of proceeding, which stand in the way of that justice, the forwarding of which is the sole rational object of their invention, cannot fairly be imputed to the common law of England, or to the ordinary practice of the courts below.

CIRCUMSTANTIAL EVIDENCE, &c.

The rules of evidence in civil and in criminal cases, in law and in equity, being only reason methodized, are certainly the same. Your Committee however finds, that the far gr r part of the law of evidence to be found books, turns upon questions relative 1 ci concerns. Civil case n ty: although property its yet thing concerning pro 1

cations, is of artificial contrivance. The rules concerning it become more positive, as connected with positive institution. The legislator therefore always, the jurist frequently, may ordain certain methods, by which alone they will suffer such matters to be known and established; because, their very essence, for the greater part, depends on the arbitrary conventions of men. Men act on them with all the power of a Creator over his creature. They make fictions of law, and presumptions of law (*presumptiones juris et de jure*) according to their ideas of utility—and against those fictions and against presumptions so created, they do and may reject all evidence. However, even in these cases, there is some restraint. Lord Mansfield has let in a liberal spirit against the fictions of law themselves; and he declared, that he would do, what in one case he actually did, and most wisely—that he would admit evidence against a fiction of law, when the fiction militated against the policy on which it was made.

Burrow, 815. Copendal v. Brigden.

Thus it is with things which owe their existence to men: But, where the subject is of a physical nature, or of a moral nature, independent of their conventions, men have no other reasonable authority, than to register and digest the results of experience and observation.

Crimes

Crimes are the actions of physical beings, with an evil intention abusing their physical powers against justice, and to the detriment of society; in this case, fictions of law and artificial presumptions *(juris et jure)* have little or no place. The presumptions which belong to criminal cases are those natural and popular presumptions which are only observations turned into maxims, like adages and apothegms, and are admitted (when their grounds are established) in the place of proof, where better is wanting; but are to be always overturned by counter proof.

These presumptions mostly go to the *intention*. In all criminal cases, the crime (except where the law itself implies malice) consists rather in the intention than the action. Now, the intention is proved but by two ways; either, 1st, by confession—this first case is rare but simple—2dly, by circumstantial proof—this is difficult, and requires care and pains. The connection of the intention and the circumstances is plainly of such a nature, as more to depend on the sagacity of the observer, shan on the excellence of any rule. The pains taken by the civilians on that subject, have not been very fruitful; and the English law writers have, perhaps, as wisely, in a manner abandoned the pursuit. In truth, it seems a wild attempt to lay down any rule for the proof of intention by circumstantial

thus to break to pieces and to garble those facts, upon the multitude of which, their combination, and the relation of all their component parts to each other, and to the culprit, the whole force and virtue of this evidence depends. To do any thing which can destroy this collective efffect, is to deny circumstantial evidence.

Your Committee too cannot but express their surprize, at the particular period of the present trial, when the attempts to which we have alluded, first began to be made. The two first great branches of the accusation of this House against Warren Hastings, Esquire, relate to public and notorious acts, capable of direct proof; such as the expulsion of Cheit Sing, with its consequences on the province of Benares, and the seizure of the treasures and Jaghires of the Begums of Oude. Yet, in the proof of those crimes, your Committee cannot justly complain, that we were very narrowly circumscribed in the production of much circumstantial as well as positive evidence. We did not find any serious resistance on this head, till we came to make good our charges of secret crimes; crimes of a class and description, in the proof of which, all Judges of all countries have found it necessary to relax almost all their rules of competency; such crimes as peculation, pecuniary

frauds, extortion, and bribery. Eight out of nine of the questions put to the Judges by the Lords, in the first stage of the prosecution, related to circumstances offered in proof of these secret crimes.

Much industry and art have been used, among the illiterate and unexperienced, to throw imputations on this prosecution, and its conduct, because so great a proportion of the evidence offered on this trial (especially on the latter charges) has been circumstantial. Against the prejudices of the ignorant, your Committee opposes the judgment of the learned. It is known to them that, when this proof is in its greatest perfection, that is, when it is most abundant in circumstances, it is much superior to positive proof; and for this we have the authority of the learned Judge who presided at the trial of Captain Donellan:—"On the part of the prosecution, a great "deal of evidence has been laid before you. It "is *all* circumstantial evidence, and in its nature "it must be so; for, in cases of this sort, no "man is weak enough to commit the act in the "presence of other persons, or to suffer them "to see what he does at the time; and there- "fore it can only be made out by circumstances, "either before the committing of the act, at "the time when it was committed, or subse- "quent to it; and a presumption, which ne-

" cessarily arises from circumstances, is very " often more convincing and more satisfactory " than any other kind of evidence, because it " is not within the reach and compass of human " abilities to invent a train of circumstances, " which shall be so connected together, as to " amount to a proof of guilt, without affording " opportunities of contradicting a great part, if " not all, of these circumstances. But if the " circumstances are such as, when laid together, " bring conviction to your minds, it is then " fully equal, if not, as I told you before, *more* " convincing than positive evidence." In the trial of Donellan no such selection was used as we have lately experienced; no limitation to the production of every matter, before, at, and after the fact charged. The trial was (as we conceive) rightly conducted by the learned Judge—because secret crimes, such as secret assassination, poisoning, bribery, peculation, and extortion (the three last of which this House has charged upon Mr. Hastings) can very rarely be proved in any other way. That way of proof is made to give satisfaction to a searching, equitable, and intelligent mind; and there must not be a failure of justice. Lord Mansfield has said, Vide sup that he did not know a case, in which proof might not be supplied.

Your Committee has resorted to the trial of

 Donellan;

Donellan; and they have, and do much rely upon it, first, on account of the known learning and ability of the Judge who tried the cause, and the particular attention he has paid to the subject of evidence, which forms a book in his treatise on *Nisi Prius*. Next, because, as the trial went *wholly* on circumstantial evidence, the proceedings in it, furnish some of the most complete, and the fullest examples on that subject. Thirdly. Because the case is recent; and the law cannot be supposed to be materially altered since the time of that event.

Comparing the proceedings on that trial, and the doctrines from the bench, with the doctrines we have heard from the woolsack, your Committee cannot comprehend how they can be reconciled. For, the Lords compelled the Managers to declare for what purpose they produced each separate member of their circumstantial evidence; a thing, as we conceive, not usual, and particularly not observed in the trial of Donellan. We have observed in that trial, and in most others to which we have had occasion to resort, that the prosecutor is suffered to proceed narratively and historically, without interruption. If indeed, it appears on the face of the narration, that what is represented to have been said, written, or done, did not come to the knowledge of the prisoner, a question sometimes,

times, but rarely, has been asked, whether the prisoner could be affected with the knowledge of it. When a connection with the person of the prisoner has been in any way shewn, or even promised to be shewn, the evidence is allowed to go on without further opposition. The sending of a sealed letter, the receipt of a sealed letter, inferred from the delivery to the prisoner's servant; the bare possession of a paper written by any other person, on the presumption that the contents of such letters, or such paper, were known to the prisoner; and the being present when any thing was said or done, on the presumption of his seeing or hearing what passed, have been respectively ruled to be sufficient. If, on the other hand, no circumstance of connection has been proved, the Judge, in summing up, has directed the jury to pay no regard to a letter or conversation, the proof of which has so failed—a course much less liable to inconvenience, where the same persons decide both the law and the fact.

Girdwood's Case. Leach, p. 128. Gordon's Case. Ibid. p. 245. Lord Preston's Case. St. Tr. IV. p. 439. Layer's Case. St. Tr. VI. p. 279. Foster's Crown Law, p. 198.

Canning's Trial. St. Tr. X. p. 263. 270.

To illustrate the difficulties to which your Committee was subjected on this head, we think it sufficient to submit to the House (reserving a more full discussion of this important point to another occasion) the following short statement of an incident which occurred in this trial.

Trial of the Duchess of Kingston. St. Tr XI, p. 244. Trial of Huggins. St. T. IX. p. 119, 120, 135.

By an express order of the Court of Directors

(to which by the express words of the Act of Parliament, under which he held his office, he was ordered to yield obedience) Mr. Hastings and his colleagues were directed to make an enquiry into all offences of bribery and corruption in office.—On the 11th of March a charge in writing of bribery and corruption in office was brought against himself. On the 13th of the same month, the accuser, a man of high rank, the Rajah Nundcomar, appears personally before the council, to make good his charge against Mr. Hastings before his own face. Mr. Hastings thereon fell into a very intemperate heat, obstinately refused to be present at the examination, attempted to dissolve the council, and contumaciously retired from it. Three of the other members, a majority of the council, in execution of their duty, and in obedience to the orders received under the Act of Parliament, proceeded to take the evidence, which is very minute and particular, and was entered in the records of the council by the regular official secretary. It was afterwards read in Mr. Hastings's own presence, and by him transmitted, under his own signature, to the Court of Directors. A separate letter was also written by him, about the same time, desiring, on his part, that in any enquiry into his conduct, "not "a single word should escape observation."

This

This proceeding in the counell, your Committee, in its natural order, and in a narrative chain of circumstantial proof, offered in evidence.—It was not permitted to be read—and on the 20th and 21st of May 1789, we were told, from the woolsack, "that when a paper is not evidence "by itself" (such this part of the consultation it seems was reputed) "a party who wishes to "introduce a paper of that kind, is called upon "not only to state, but to make out on proof, "the whole of the grounds upon which he pro- "ceeds to make that paper proper evidence.— "That the evidence that is produced must be "*the demeanour* of the party respecting that "paper; and it is the connection between them, "*as material to the charge depending*, that will "enable them to be produced."

Your Committee observes, that this was not a paper *foreign* to the prisoner, and sent to him *as a letter*, the receipt of which, and his conduct thereon, were to be brought home to him, to infer his guilt from his demeanour. It was an office document of his own department, concerning himself, and kept by officers of his own, and by himself transmitted, as we have said, to the Court of Directors. Its proof was in the record. The charge made against him, and his demeanour on being acquainted with it, were not in separate evidence. They all lay together, and

composed a connected narrative of the business, authenticated by himself.

In this case it seems to your Committee extremely irregular and preposterous to demand previous and extraneous proofs of the demeanour of the party respecting the paper, and the connection between them, as *material to the charge* depending; for this would be to try what the effect and operation of the evidence would be on the issue of the cause, before its production.

The doctrine so laid down, demands that every several circumstance should in itself be conclusive, or at least should afford a violent presumption; it must, we were told, without question, be material to the charge depending: but, as we conceive, its materiality, more or less, is not in the first instance to be established. To make it admissible, it is enough to give proof, or to raise a legal inference, of its connection both with the charge depending, and the person of the party charged, where it does not appear on the face of the evidence offered. Besides, by this new doctrine, the materiality required to be shewn, must be decided from a consideration, not of the whole circumstance, but, in truth, of one half of the circumstance of a demeanour, unconnected with, and unexplained by, that on which it arose, though the connection between the demeanour of the party and the paper is that

which

which must be shewn to be material. Your Committee, after all they have heard, is yet to learn how the full force and effect of any demeanour, as evidence of guilt or innocence, can be known, unless it be also fully known to what that demeanour applied; unless when a person did or said any thing, it be known, not generally and abstractedly, that a paper was read to him, but particularly and specifically what were the contents of that paper: Whether they were matters lightly or weightily alledged; within the power of the party accused to have confuted on the spot, if false; or such as, though he might have denied, he could not instantly have disproved. The doctrine appeared, and still appears, to your Committee to be totally abhorrent from the genius of circumstantial evidence, and mischievously subversive of its use. We did, however, offer that extraneous proof which was demanded of us; but it was refused, as well as the office document.

Your Committee thought themselves the more bound to contend for every mode of evidence *to the intention*; because in many of the cases the gross fact was admitted, and the prisoner and his counsel set up pretences of public necessity and public service for his justification. No way lay open for rebutting this justification, but

but by bringing out all the circumstances attendant on the transaction.

ORDER AND TIME OF PRODUCING EVIDENCE.

Your Committee found great impediment in the production of evidence, not only on account of the general doctrines supposed to exist concerning its inadmissibility, drawn from its own alledged natural incompetency, or from its inapplicability under the pleading of the impeachment of this House; but also from the mode of proceeding in bringing it forward. Here evidence which we thought necessary to the elucidation of the cause was not suffered, upon the supposed rules of *examination in chief, and cross examination*—and on supposed rules, forming a distinction between evidence *originally* produced on the charge, and evidence offered on the *reply*.

On all these your Committee observes in general, that if the rules, which respect the substance of the evidence, are (as the great lawyers on whose authority we stand assert they are) no more than rules of convenience, much more are those subordinate rules, which regard the order, the manner, and the time of the arrangement. These are purely arbitrary; without the least reference to any fixed principle in the nature of things,

things, or to any settled maxim of jurisprudence, and consequently are variable at every instant, as the conveniences of the cause may require.

We admit, that in the order of mere arrangement there is a difference between examination of witnesses in chief, and cross examination, and that in general these several parts are properly cast, according to the situation of the parties in the cause; but there neither is nor can be any precise rule to discriminate the exact bounds between examination and cross examination. So, as to time, there is necessarily some limit, but a limit hard to fix: The only one which can be fixed with any tolerable degree of precision, is, when the Judge, after fully hearing all parties, is to consider of his verdict or his sentence. Whilst the cause continues under hearing in any shape, or in any stage of the process, it is the duty of the Judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves, through negligence, ignorance, or corrupt collusion, should not bring it forward. A Judge is not placed in that high situation merely as a passive instrument of parties: He has a duty of his own, independent of them, and that duty is to investigate the truth. There may be no prosecutor.—In our law a permanent *prosecutor* is not of necessity. The crown *prosecutor* in criminal

criminal cases is a grand jury; and this is dissolved instantly on its findings and its presentments. But if no prosecutor appears (and it has happened more than once) the court is obliged through its officer, the clerk of the arraigns, to examine and cross examine every witness who presents himself; and the Judge is to see it done effectually, and to act his own part in it; and this as long as evidence shall be offered within the time which the mode of trial will admit.

Your Committee is of opinion, that if it has happened, that witnesses or other kinds of evidence have not been frequently produced after the closing of the prisoner's defence, or such evidence has not been in reply given, it has happened from the peculiar nature of our common judicial proceedings, in which all the matter of evidence must be presented, whilst the bodily force and the memory, or other mental faculties of men, can hold out. This does not exceed the compass of one natural day, or thereabouts; during that short space of time, new evidence very rarely occurs for production by any of the parties; because the nature of men, joined to the nature of the tribunals, and of the mode of trial at common law (good and useful on the whole) prescribe limits which the mere principles of justice would of themselves never fix.

But in other courts, such as the Court of Chancery,

Chancery, the Courts of Admiralty Jurisdiction (except in prize causes under the Act of Parliament) and in the Ecclesiastical Courts, wherein the trial is not by an inclosed jury, in all those courts such strait limits are not of course necessary: The cause is continued by many adjournments; as long as the trial lasts, new witnesses are examined, (even after the regular stage,) for either party, on a special application to the sound discretion of the court, when the evidence offered is newly come to the knowledge or power of the party, and appears on the face of it to be material in the cause. *Even, after hearing*, new witnesses have been examined, or former witnesses re-examined, not as the right of the parties, but *ad informandam conscientiam judicis.* All these things are not unfrequent in some, if not in all, of these courts, and perfectly known to the Judges of Westminster Hall, who cannot be supposed ignorant of the practice of the Court of Chancery; and who sit to try appeals from the Admiralty and Ecclesiastical Courts as delegates.

Harrison's Practice Chancery Vol. II. p. 46. 1 ca. 128. 1 ch. ca. Oughton, Tit. 81, 8 83. D. Ti 116; Vin Tit. Evidence, (P. a.)

But as criminal prosecutions, according to the forms of the civil and canon law, are neither many nor important in any court of this part of the kingdom, your Committee thinks it right to state the undisputed principle of the imperial law, from the great writer on this subject before cited

Carpz. Pract. Saxon. Crimin. Part. III. Quest. 114. N° 13.

cited by us;—from Carpzovius. He says, "that "a doubt has arisen whether evidence being "once given in a trial on a public prosecution "(*in processu inquisitorio*) and the witnesses "being examined, it may be allowed to form "other and new articles, and to produce new "witnesses." Your Committee must here observe, that the *processsus inquisitorius* is that proceeding in which the prosecution is carried on in the name of the Judge acting *ex officio*; from that duty of his office, which is called the *nobile officium Judicis*. For the Judge under the imperial law possesses both those powers, the inquisitorial and the judicial, which in the High Court of Parliament are more aptly divided and exercised by the different Houses; and in this kind of process the House will see that Carpzovius couples the production of new witnesses and the forming of new articles (the undoubted privilege of the Commons) as intimately and necessarily connected. He then proceeds to solve the doubt—"Certainly (says he) there are "authors who deny, that, after publication of "the depositions, any new witnesses and proofs, "that can affect the prisoner, ought to be re-"ceived, which (says he) is true in a case where "a private prosecutor has intervened, who pro-"duces the witnesses. But if the Judge proceeds "by way of inquisition *ex officio*, then, even "after

" after the completion of the examination of " witnesses against the prisoner, new witnesses " may be received and examined; and on new " grounds of suspicion arising, new articles may " be formed according to the common opinion " of the doctors; and as it is the most generally " received, so it is most agreeable to reason." And in another chapter, relative to the ordinary criminal process by a private prosecutor, he lays it down, on the authority of Angelus, Bartolus, and others, that after the right of the party prosecuting is expired, the Judge taking up the matter *ex officio* may direct new witnesses and new proofs, even after publication. Other passages from the same writer, and from others, might be added; but your Committee trusts that what they have produced is sufficient to shew the general principles of the imperial criminal law.

Carpz. Pract. Saxon. Part. III. Quest. 106. N° 89.

The modes of proceeding in the High Court of Parliament bear a much greater resemblance to the course of the Court of Chancery, the Admiralty, and Ecclesiastical Courts (which are the King's Courts too, and their law the law of the land) than to those of the common law.

The accusation is brought into Parliament at this very day by *exhibiting articles*; which, your Committee is informed, is the regular mode of commencing a criminal prosecution, where the office of the Judge is promoted in the civil and canon

canon law courts of this country. The answer, again, is usually specific, both to the fact and the law alledged in each particular article, which is agreeable to the proceeding of the civil law, and not of the common law.

Anciently the resemblance was much nearer and stronger. Selden, who was himself a great ornament of the common law, and who was personally engaged in most of the impeachments of his time, has written expressly on the judicature in Parliament. In his fourth chapter, intituled, *Of Witnesses*, he lays down the practice of his time, as well as of ancient times, with respect to the proof by examination; and it is clearly a practice more similar to that of the civil than the common law. "The practice at this day (says "he) is to swear the witnesses in open House, "and then to examine them there, *or at a Com-* "*mittee*, either upon *interrogatories* agreed upon "in the House, or such as the Committee in "their discretion shall demand—thus it was in "ancient times, as shall appear by the prece- "dents, so many as they are, they being very "sparing to record those ceremonies, which "I shall briefly recite, I then add those of later "times."

21 Jac. I. 1624. Accordingly, in times so late as those of the trial of Lord Middlesex, upon an impeachment of the Commons, the whole course of the proceeding

proceeding, especially in the mode of adducing the evidence, was in a manner the same as in the civil law: Depositions were taken, and publication regularly passed; and on the trial of Lord Strafforde, both modes pointed out by Selden seem to have been indifferently used.

It follows, therefore, that this High Court (bound by none of their rules) has a liberty to adopt the methods of any of the legal courts of the kingdom at its discretion; and in *sound* discretion it ought to adopt those, which bear the nearest resemblance to its own constitution, to its own procedure, and to its exigencies in the promotion of justice. There are conveniencies and inconveniencies both in the shorter and the longer mode of trial. But to bring the methods observed (if such are in fact observed) in the former, only from necessity, into the latter, by choice, is to load it with the inconveniency of both, without the advantages of either. The chief benefit of any process, which admits of adjournments, is, that it may afford means of fuller information and more mature deliberation. —If neither of the parties have a strict right to it, yet the court or the jury, as the case may be, ought to demand it.

Your Committee is of opinion, that all rules relative to laches or neglects in a party to the suit, which may cause nonsuit on the one hand,

or judgment by default in the other, all things which cause the party *cadere in jure*, ought not to be adhered to in the utmost rigour, even in civil cases; but still less ought that spirit, which takes advantage of lapses and failures, on either part, to be suffered to govern in causes criminal. "Judges ought to lean against every attempt to "*nonsuit* a plaintiff on objections, which have "no relation to the real merits. It is uncon- "scionable in a defendant to take advantage of "the *apices titigandi*;—against such objections, "every possible presumption ought to be made "which ingenuity can suggest. How disgraceful "would it be to the administration of justice to "allow chicane to obstruct right!" This observation of Lord Mansfield applies equally to every means, by which, indirectly, as well as directly, the cause may fail, upon any other principles than those of its merits. He thinks, that all the resources of ingenuity ought to be employed to baffle chicane, not to support it. The case, in which Lord Mansfield has delivered this sentiment is merely a civil case. In civil causes of *meum & tuum*, it imports little to the commonwealth, whether *Titus* or *Mœvius* profits of a legacy; or whether *John a Nokes* or *John a Stiles* is seised of the manor of *Dale*. For which reason, in many cases, the private interests of men are left by courts to suffer by their

Morris v. Pugh and others. Burrow, p. 1243. See also Burrow, 4. Dickson v. Fisher. Alder v. Chip. Grey v. Smythies. Blackstone's Reports. N. B.—All from the same Judge, and proceeding on the same principle.

their own neglects, and their own want of vigilance, as their fortunes are permitted to suffer from the same causes in all the concerns of common life. But in crimes, where the prosecution is on the part of the public (as all criminal prosecutions are, except appeals) the public presecutor ought not to be considered as a plaintiff in a cause of *meum & tuum*; nor the prisoner, in such a cause, as a common defendant. In such a cause the state itself is highly concerned in the event: On the other hand, the prisoner may lose life, which all the wealth and power of all the states in the world cannot restore to him. Undoubtedly the state ought not to be weighed against justice; but it would be dreadful indeed if causes of such importance should be sacrificed to petty regulations, of mere secondary convenience, not at all adapted to such concerns, nor even made with a view to their existence. Your Committee readily adopts the opinion of the learned *Ryder*, that it would be better if there were no such rules, than that there should be no exceptions to them. Lord *Hardwicke* declared very properly, in the case of the Earl of Chesterfield against Sir Abraham Janson, "That political arguments, in the fullest sense "of the word, as they concerned the government "of a nation, must be, and always have been, of "great weight in the consideration of this court. Atkyn's Reports, Vol. I. Chesterfield v. Janson.

" Though there be no *dolus malus* in contracts, " with regard to other persons, yet if the rest " of mankind are concerned as well as the parties, " it may be properly said, it regards the public " utility." Lord Hardwicke laid this down in a cause of *meum & tuum*, between party and party, where the public was concerned only remotely, and in the example; not as in this prosecution, when the political arguments are infinitely stronger, the crime relating, and in the most eminent degree relating, to the public.

One case has happened since the time which is limited by the order of the House for this Report: It is so very important, that we think ourselves justified in submitting it to the House without delay. Your Committee, on the supposed rules here alluded to, has been prevented from examining (as of right) a witness of importance in the case, and one on whose supposed knowledge of his most hidden transactions, the prisoner had himself, in all stages of this business, as the House well knows, endeavoured to raise presumptions in favour of his cause. Indeed it was his principal, if not only justification, as to the *intention*, in many different acts of corruption charged upon him.—The witness to whom we allude, is Mr. Larkins. This witness came from India after your Committee had closed the evidence of this House, in chief; and

and could not be produced before the time of the reply. Your Committee was not suffered to examine him; not, as they could find, on objections to the particular question, as improper, but upon some or other of the general grounds (as they believe) on which Mr. Hastings resisted any evidence from him. The party, after having resisted his production, on the next sitting day admitted him; and by consent he was examined: Your Committee entered a protest on their minutes in favour of their right. Your Committee contended, and do contend, that by the law of Parliament, whilst the trial lasts, they have full right to call new evidence, as the circumstances may afford, and the posture of the cause may demand it. This right seems to have been asserted by the managers for the Commons, in the case of Lord Stafford—32 Cha. II. The Managers, in that case, claimed it as the right of the Commons to produce witnesses for the purpose of fortifying their former evidence.—Their claim was admitted by the court. It is an adjudged case in the law of parliament. Your Committee is well aware, that the notorious perjury and infamy of the witnesses in the trial of Lord Stafford, has been used to throw a shade of doubt and suspicion on all that was transacted on that occasion. But there is no force in such an objection. Your Committee has no

State Trials, Vol. III. p. 170.

concern in the defence of these witnesses; nor of the Lords who found their verdict on such testimony; nor of the morality of those who produced it. Much may be said to palliate errors on the part of the prosecutors and Judges, from the heat of the times, arising from the great interests then agitated. But it is plain, there may be perjury in witnesses, or even conspiracy unjustly to prosecute, without the least doubt of the legality and regularity of the proceedings in any part. This is too obvious and too common to need argument or illustration. The proceeding in Lord Stafford's case never has, for an hundred and fourteen years, either in the warm controversies of parties, or in the cool disquistions of lawyers or historians, been questioned. The perjury of the witnesses has been more doubted at some periods, than the regularity of the process has been at any period. The learned lawyer who led for the Commons in that impeachment (Serjeant Maynard) had, near forty years before, taken a forward part in the great cause of the impeachment of Lord Strafforde; and was, perhaps, of all men then in England, the most conversant in the law and usage of Parliament. Jones was one of the ablest lawyers of his age. His colleagues were eminent men.

In the trial of Lord Strafforde (which has attracted the attention of history more than any other,

other, on account of the importance of the cause itself, the skill and learning of the prosecutors, and the eminent abilities of the prisoner) after the prosecutors for the Commons had gone through their evidence on the articles; after the prisoner had also made his defence, either upon each severally, or upon each body of articles as they had been collected into one; and the managers had, in the same manner replied; when, previous to the general concluding reply of the prosecutors, the time of the general summing up (or recollection as it was called) of the whole evidence on the part of Lord Strafforde arrived, the managers produced new evidence. Your Committee wishes to call the particular attention of the House to this case, as the contest between the parties did very nearly resemble the present; but, principally, because the sense of the Lords on the law of Parliament, in its proceedings with regard to the reception of evidence, is there distinctly laid down: So is the report of the Judges relative to the usage of the courts below, full of equity and reason, and in perfect conformity with the right for which we contended in favour of the public, and in favour of the Court of Peers itself. The matter is as follows. Your Committee gives it at large:

" After this, the Lord Steward adjourned this " House to Westminster Hall; and the Peers

Lords Journals, 17 Ch. I Die Sabbi videlicet 10 April

" being all set there in their places, the Lord " Steward commanded the lieutenant of the " Tower to bring forth the Earl of Strafforde " to the bar; which being done, the Lord Stew- " ard signified, that both sides might make " a recollection of their evidence, and the Earl " of Strafforde to begin first.

" Hereupon Mr. Glynn desired, that before " the Earl of Strafforde began, that the Com- " mons might produce two witnesses to the " fifteenth and twenty-third articles, to prove " that there be two men whose names are " Berne; and so a mistake will be made clear. " The Earl of Strafforde desired, that no new " witnesses may be admitted against him, unless " he might be permitted to produce witnesses " on his part likewise; which the Commons " consented to, so the Earl of Strafforde would " confine himself to those articles upon which " he made reservations; but he not agreeing to " that, and the Commons insisting upon it; " The House was adjourned to the usual place " above, to consider of it; and after some " debate, their Lordships thought it fit, That " the members of the commons go on in pro- " ducing new witnesses, as they shall think fit, " to the fifteenth and twenty-third articles; and " that the Earl of Strafforde may presently pro- " duce such witnesses as are present; and such

" as

" as are not, to name them presently, and to
" proceed on Monday next; and also, if the
" Commons and Earl of Strafforde will proceed
" upon any other articles, upon new matter, they
" are to name the witnesses and articles on both
" sides presently, and to proceed on Monday
" next; but both sides may waive it if they will.
" The Lord Steward adjourned this House
" to Westminster Hall; and, being returned
" thither, signified what the Lords had thought
" fit for the better proceeding in the business.
" The Earl of Strafforde, upon this, desiring
" not to be limited to any reservation, but to be
" at liberty for what articles are convenient for
" him to fortify with new witnesses *; to which
" the commons not assenting, and for other
" scruples which did arise in the case, one of
" the Peers did desire that the House might be
" adjourned, to consider further of the par-
" ticulars. Hereupon the Lord Steward ad-
" journed the House to the usual place above.
" The Lords, being come up into the House,
" fell into debate of the business; and, for
" the better informing of their judgments what
" was the course and common justice of the king-
" dom, propounded this question to the Judges;
" Whether it be according to the course of
" practice, and common justice, before the
" Judges

* Sic in original.

" Judges in their several courts, for the pro-
" secutors in behalf of the King, *during the*
" *time of trial, to produce witnesses to dis-*
" *cover the truth*, and whether the prisoner
" may not do the like? The Lord Chief
" Justice delivered this, as the unanimous
" opinions of himself and all the rest of the
" Judges: That, according to the course of
" practice, and common justice, before them
" in their several courts, upon trial by jury, *as*
" *long as the prisoner is at the bar, and the*
" *jury not sent away*, either side may give their
" evidence, and examine witnesses to discover
" truth; and this is all the opinion as we can
" give concerning the proceedings before us.
" Upon some consideration after this the House
" appointed the Earl of Bath, Earl of South'ton,
" Earl of Hartford, Earl of Essex, Earl of
" Bristoll, and the Lord Viscount Say et Seale,
" To draw up some reasons upon which the
" former order was made; which being read
" as followeth, were approved of, as the order
" of the House: The Gentlemen of the House
" of Commons did declare, that they challenge
" to themselves, by the common justice of the
" kingdom, that they, being prosecutors for
" the King, may bring any new proofs by wit-
" nesses during the time of the evidence being

" not

" not fully concluded, The Lords, being Judges,
" and so equal to them and the prisoner, con-
" ceived this their desire to be just and reason-
" able; and also that, by the same common
" justice, the prisoner may use the same liberty;
" and that, to avoid any occasions of delay,
" the Lords thought fit that the articles and
" witnesses be presently named, and such as
" may be presently produced to be used pre-
" sently; and no further time to be given.
" The Lord Steward was to let them know,
" that if they will on both sides waive the use of
" new witnesses, they may proceed to the re-
" collection of their evidence on both sides; if
" both sides will not waive it, then the Lord
" Steward is to read the precedent order; and,
" if they will not proceed then, this House is to
" adjourn and rise."

By this it will appear to the House, how much this exclusion of evidence, *brought for the discovery of truth*, is unsupported either by parliamentary precedent, or by the rule as understood in the common law courts below; and your Committee (protesting however against being bound by any of the technical rules of inferior courts) thought and think they had a right to see such a body of precedents and arguments for the rejection of evidence during trial,

trial, in some court or other, before they were in this matter stopped and concluded.

Your Committee has not been able to examine every criminal trial in the voluminous collection of the State Trials, or elsewhere; but having referred to the most laborious compiler of law and equity, Mr. Viner, who has allotted a whole volume to the title of evidence, we find but one ruled case in a trial at common law, before or since, where new evidence for the discovery of truth has been rejected, as not being in due time. "A privy verdict had been given in "B. R. 14 Eliz. for the defendant, but afterwards "before the inquest gave their verdict openly, "the plaintiff prayed that he might give more "evidence to the jury, he having (as it seemed) "discovered that the jury had found against "him, but the Justices would not admit him to "do so: but after that Southcote, J. had been "in C. B. to ask the opinion of the Justices "there, they took the verdict." In this case the offer of new evidence was not during the trial. The trial was over. The verdict was actually delivered to the Judge. There was also an appearance that the discovery of the actual finding had suggested to the plaintiff the production of new evidence—yet it appeared to the Judges so strong a measure to refuse evidence,

Dal. 80. Pl. 18. Anno 24 Eliz. apud Viner Evid. p. 60.

whilst

whilst any, even formal, appearance remained, that the trial was not closed, that they sent a Judge from the bench into the Common Pleas to obtain the opinion of their brethren there, before they could venture to take upon them to consider the time for production of evidence as elapsed. The case of refusal, taken with its circumstances, is full as strong an example in favour of the report of the Judges in Lord Strafforde's case, as any precedent of admittance can be.

The researches of your Committee not having furnished them with any cases in which evidence has been rejected during the trial, as being out of time, we have found some instances in which it has been actually received; and received not to repel any new matter in the prisoner's defence—but when the prisoner had called all his witnesses, and thereby closed his defence. A remarkable instance occurred on the trial of Harrison, for the murder of Dr. Clenche. The Justices who tried the cause, (viz.) Lord Chief Justice Holt, and the Justices Atkins and Nevil, admitted the prosecutor to call new evidence, for no other reason but that a new witness was then come into court, who had not been in court before. These Justices apparently were of the same opinion on this point with the Justices,

State Trials, Vol. IV. p. 508.

tices who gave their opinion in the case of Lord Strafforde. Your Committee on this point, as on the former, cannot discover any authority for the decision of the House of Lords in the law of Parliament, or in the law practice of any Court in this kingdom.

PRACTICE BELOW.

Your Committee not having learned that the resolutions of the Judges (by which the Lords have been guided) were supported by any authority in law to which they could have access, have heard by rumour, that they have been justified upon the practice of the Courts, in ordinary trials by commission of Oyer and Terminer. To give any legal precision to this term of *practice*, as thus applied, your Committee apprehends it must mean—that the Judge in those criminal trials has so regularly rejected a certain kind of evidence when offered there, that it is to be regarded in the light of a case frequently determined by legal authority. If such had been discovered, though your Committee never could have allowed these precedents as rules for the guidance of the High Court of Parliament, yet they should not be surprised to see the inferior Judges forming their opinions on their own

confined

confined practice. Your Committee, in their enquiry, has found comparatively few reports of criminal trials, except the collection under the title of State Trials, a book compiled from materials of very various authority, and in none of those which we have seen is there, as appears to us, a single example of the rejection of evidence, similar to that rejected by the advice of the Judges in the House of Lords. Neither, if such examples did exist, could your Committee allow them to apply directly and necessarily as a measure of reason to the proceedings of a court constituted so very differently from those in which the common law is administered. In the trials below, the Judges decide on the competency of the evidence before it goes to the jury, and (under the correctives in the use of their discretion stated before in this report) with great propriety and wisdom. Juries are taken promiscuously from the mass of the people; they are composed of men who, in many instances, in most perhaps, never were concerned in any causes, judicially or otherwise, before the time of their service. They have generally no previous preparation or possible knowledge of the matters to be tried, or what is applicable or inapplicable to them; and they decide in a space of time too short for any nice or critical disquisition.

quisition. The Judges, therefore, of necessity, must forestall the evidence where there is a doubt on its competence, and indeed observe much on its credibility, or the most dreadful consequences might follow. The institution of juries, if not thus qualified, could not exist. Lord *Mansfield* makes the same observation with regard to another corrective of the short mode of trial—that of a *new trial.*

This is the law, and this its policy. The jury are not to decide on the competency of witnesses, or of any other kind of evidence, in any way whatsoever. Nothing of that kind can come before them. But the Lords in the High Court of Parliament are not, either actually or virtually, a jury. No legal power is interposed between them and evidence; they are themselves by law fully and exclusively equal to it. They are persons of high rank, generally of the best education, and of sufficient knowledge of the world; and they are a permanent, a settled, a corporate, and not an occasional and transitory judicature. But it is to be feared, that the authority of the Judges (in the case of juries legal) may, from that example, weigh with the Lords further than its reason, or its applicability to the judicial capacity of the Peers can support. It is to be feared, that if the Lords should think themselves bound implicitly

implicitly to submit to this authority, that at length they may come to think themselves to be no better than jurors, and may virtually consent to a partition of that judicature, which the law has left to them whole, supreme, uncontrouled, and final.

This final and independent judicature, because it is final and independent, ought to be very cautious with regard to the rejection of evidence. —If incompetent evidence is received by them, there is nothing to hinder their judging upon it afterwards according to its value. It may have no weight in their judgment; but if, upon advice of others, they previously reject information necessary to their proper judgment, they have no intermediate means of setting themselves right, and they injure the cause of justice without any remedy. Against errors of Juries, there is remedy by a new trial; against errors of Judges there is remedy, in civil causes, by demurrer and bills of exceptions; against their final mistake there is remedy by writ of error, in Courts of Common Law. In Chancery there is a remedy by appeal. If they wilfully err in the rejection of evidence, there was formerly the terror existing of punishment by impeachment of the Commons;—but with regard to the Lords, there is no remedy for error, no punishment for a wilful wrong.

Your Committee conceives it not improbable, that this apparently total and unreserved submission of the Lords to the dictates of the Judges of the inferior Courts (no proper Judges in any light, or in any degree, of the law of Parliament) may be owing to the very few causes of *original* jurisdiction, and the great multitude of those of *appellate* jurisdiction which come before them. In cases of appeal or of error (which is in the nature of an appeal) the Court of Appeal is obliged to judge, not by its *own* rules, acting in another capacity, or by those which it shall choose *pro re natâ* to make, but by the rules of the inferior Court from whence the appeal comes, for the fault or the mistake of the inferior Judge is, that he has not proceeded as he ought to do, according to the law which he was to administer; and the correction, if such shall take place, is to compel the Court from whence the appeal comes, to act as originally it ought to have acted according to law, as the law ought to have been understood and practised in that tribunal. The Lords, in such cases of necessity, judge on the grounds of the law, and practice of the Courts below; and this they can very rarely learn with precision, but from the body of the Judges. Of course much deference is, and ought to be had to their opinions. But by this means a confusion may arise (if not well guarded

guarded against) between what they do in their *appellate* jurisdiction, which is frequent, and what they ought to do in their *original* jurisdiction, which is rare; and by this the whole original jurisdiction of the Peers, and the whole law and usage of Parliament, at least in their virtue and spirit, may be considerably impaired.

After having thus submitted to the House the general tenor of the proceedings in this trial, your Committee will, with all convenient speed, lay before the House the proceedings on each head of evidence separately, which has been rejected; and this they hope will put the House more perfectly in possession of the principal causes of the length of this trial, as well as of the injury which Parliamentary justice may, in their opinion, suffer from those proceedings.

30th April 1794.

APPENDIX.

Appendix, No. 1.

IN THE CASE OF EARL FERRERS.

April 17th, 1760.

Forster's Crown Law, Page 138. Fo. Edit.

THE House of Peers unanimously found Earl Ferrers guilty of the felony and murder whereof he stood indicted; and the Earl being brought to the bar, the High Steward acquainted

Pa. 139. him therewith; and the House immediately adjourned to the Chamber of Parliament: And having put the following question to the Judges, adjourned to the next day.

"Supposing a Peer, so indicted and convicted, "ought by law, to receive judgment as afore- "said, and the day appointed by the judgment "for execution should lapse before such execu- "tion done, whether a new time may be ap- "pointed for the execution, and by whom?"

On the eighteenth, the House then sitting in the Chamber of Parliament, the Lord Chief Baron, in the absence of the Chief Justice of the Common

Common Pleas, delivered, in writing, the opinion of the Judges, which they had agreed on and reduced into form that morning. His lordship added many weighty reasons in support of the opinion; which he urged with great strength and propriety, and delivered with a becoming dignity.

TO THE SECOND QUESTION.

" Supposing the day appointed by the judg-
" ment for execution should lapse before such
" execution done, (which, however, the law will
" not presume,) we are all of opinion, that a new
" time may be appointed for the execution,
" either by the High Court of Parliament, before
" which such Peer shall have been attainted, or
" by the Court of King's Bench, the Parliament Pa. 140.
" not then sitting; the record of the attainder
" being properly removed into that court."

The reasons upon which the Judges founded their answer to the question relating to the further proceedings of the House after the High Steward's commission dissolved, which is usually done upon pronouncing judgment, may possibly require some further discussion. I will, therefore, before I conclude, mention those which weighed with me, and, I believe, with many others of the Judges.

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REASONS, &c.

ister's own Law, 142 to 3.

Every proceeding in the House of Peers acting in its judicial capacity, whether upon writ of error, impeachment, or indictment, removed thither by certiorari, is in judgment of law a proceeding before the King in Parliament: And therefore the House, in all those cases, may not improperly be styled, The Court of our Lord the King in Parliament. This court is founded upon immemorial usage, upon the law and custom of Parliament, and is part of the original system of our constitution. It is open for all the purposes of judicature during the continuance of the Parliament: It openeth at the beginning and shutteth at the end of every session; *just* as the Court of King's Bench, which is likewise in judgment of law held before the King himself, openeth and shutteth with the term. The authority of this court, or, if I may use the expression, its constant activity for the ends of public justice, independent of any special powers derived from the Crown, is not doubted in the case of writs of error from those courts of law whence error lieth in Parliament, and of impeachments for misdemeanors.

It was formerly doubted, whether, in the case of an impeachment for treason, and in the case

of an indictment against a Peer for any capital crime, removed into Parliament by certiorari, whether in these cases the court can proceed to trial and judgment, without an High Steward, appointed by special commission from the Crown. This doubt seemeth to have arisen from the not distinguishing between a proceeding in the court of the High Steward, and that before the King in Parliament. The name, style, and title of office is the same in both cases; but the office, the powers and preheminences annexed to it, differ very widely; and so doth the constitution of the courts where the offices are executed. The identity of the name may have confounded our ideas, as equivocal words often do, if the nature of things is not attended to; but the nature of the offices, properly stated, will I hope remove every doubt on these points. In the court of the High Steward, he alone is Judge in all points of law and practice; the Peers triers are merely Judges of fact, and are summoned by virtue of a precept from the High Steward, to appear before him on the day appointed by him for the trial, Ut Rei Veritas melius sciri poterit. The High Steward's commission, after reciting that an indictment hath been found against the Peer by the Grand Jury of the proper county, impowereth him to send for the indictment, to

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convene the prisoner before him, at such day and place as he shall appoint, then and there to hear and determine the matter of such indictment; to cause the Peers triers tot & tales, per quos Rei Veritas melius sciri poterit, at the same day and place to appear before him, Veritateque inde compertâ, to proceed to judgment according to the law and custom of England, and thereupon to award execution.* By this it is plain that the sole right of judicature is in cases of this kind vested in the High Steward; that it resideth solely in the person; and consequently without the commission, which is but in nature of a commission of Oyer and Terminer, no one step can be taken in order to a trial; and that when his commission is dissolved, which he declareth by breaking his staff, the court no longer existeth.

But in a trial of a Peer in full Parliament, or, to speak with legal precision, before the King in Parliament, for a capital offence, whether upon impeachment or indictment, the case is quite otherwise; every Peer present at the trial, and every Temporal Peer, hath a right to be present in every part of the proceeding; voteth upon every

* See Lord Clarendon's commission as High Steward, and the writs and precepts preparatory to the trial, in Lord Morley's case. VII. St. Tri.

every question of law and fact; and the question is carried by the major vote, the High Steward himself voting merely as a Peer and member of that court, in common with the rest of the Peers, and in no other right. Appendix. No. 1.

It hath indeed been usual, and very expedient it is, in point of order and regularity, and for the solemnity of the proceeding, to appoint an officer for presiding during the time of the trial, and until judgment, and to give him the style and title of Steward of England; but this maketh no sort of alteration in the constitution of the court; it is the same court founded in immemorial usage, in the law and custom of Parliament, whether such appointment be made or not. It acteth in its judicial capacity in every order made touching the time and place of the trial, the postponing the trial from time to time upon petition, according to the nature and circumstances of the case, the allowance or non-allowance of council to the prisoner, and other matters relative to the *trial; and all this before an High Steward hath been appointed. And so little was it apprehended, in some cases which I shall mention presently, that the existence of the court depended on the appointment of an High

* See the orders previous to the trial, in the cases of the Lords Kilmarnock, &c. and Lord Lovat, and many other modern cases.

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High Steward, that the court itself directed in what manner, and by what form of words, he should be appointed. It hath likewise received and recorded the prisoner's confession, which amounteth to a conviction, before the appointment or an High Steward; and hath allowed to prisoners the benefit of Acts of General Pardon, where they appeared entitled to it, as well with the appointment of an High Steward, as after his commission dissolved. And when, in the case of impeachments, the Commons have sometimes, at conferences between the Houses, attempted to interpose in matters preparatory to the trial, the general answer hath been, "This is a point of judicature upon "which the Lords will not confer; they impose "silence upon themselves," or to that effect. I need not here cite instances; every man who hath consulted the journals of either House hath met with many of them.

I will now cite a few cases, applicable, in my opinion, to the present question. And I shall confine myself to such as have happened since the Restoration; because, in questions of this kind, modern cases, settled with deliberation, and upon a view of former precedents, give more light and satisfaction than the deepest search into antiquity can afford. And also because the prerogatives of the Crown, the privileges

vileges of Parliament, and the rights of the subject in general, appear to have been more studied and better understood, at and for some years before that period, than in former ages. Appendix, No. 1.

In the case of the Earl of Danby, and the Popish Lords then under impeachments, the Lords, on the 6th of May 1769, appointed time and place for hearing the Earl of Danby, by his counsel, upon the validity of his plea of pardon, and for the trials of the other Lords; and voted an address to His Majesty, praying that he would be pleased to appoint an High Steward for those purposes. These votes were, on the next day, communicated to the Commons by message in the usual manner. On the 8th, at a conference between the Houses, upon the subject matter of that message, the Commons expressed themselves to the following effect: "They cannot apprehend "what should induce your Lordships to address "His Majesty for an High Steward, for determin- "ing the validity of the pardon which hath been "pleaded by the Earl of Danby, as also for the "trial of the other five Lords, because they con- "ceive the constituting an High Steward is "not necessary, but that judgment may be "given in Parliament upon impeachment with- "out an High Steward;" and concluded with a proposition, that for avoiding any interruption Lords Journ.

or

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or delay, a committee of both houses might be nominated, to consider of the most proper ways and methods of proceeding. This proposition the House of Peers, after a long debate, rejected. *Dissientientibus*, Finch,* Chancellor, and many other Lords. However, on the 11th the Commons proposition of the 8th was, upon a second debate agreed to; and the Lord Chancellor, Lord President, and ten other Lords, were named of the Committee, to meet and confer with a committee of the Commons. The next day the Lord President reported, That the commitees of both houses met that morning, and made an entrance into the business referred to them; that the Commons desired to see the commissions that are prepared for an High Steward at these trials, and also the commissions in the Lord Pembroke's and the Lord Morley's cases. That to this the Lord's committees said, "*The High Steward* "*is but speaker pro tempore, and giveth his vote* "*as well as the other Lords; this changeth not* "*the nature of the court.* And the Lords de- "clared they have power enough to proceed "to trial, though the King should not name "an High Steward †. That this seemed to be "a satisfaction

* Afterwards Earl of Nottingham.

† In the Commons Journal of the 15th of May it standeth thus: Their Lordships further declare to the Committee, that a Lord

"a satisfaction to the Commons, provided it was "entered in the Lords journal, which are re- "cords." Accordingly, on the same day, "*It is* "*declared and ordered, by the Lords spiritual and* "*temporal in Parliament assembled, that the* "*office of an High Steward upon trials of Peers* "*upon impeachments, is not necessary to the* "*House of Peers*; *but that the Lords may pro-* "*ceed in such trials if an High Steward be not* "*appointed according to their humble desire* *." On the 13th the Lord President reported, That the committees of both Houses had met that morning, and discoursed, in the first place, on the matter of a Lord High Steward, and had perused former commissions for the office of High Steward; and then, putting the House in mind of the order and resolution of the preceding day, proposed from the committees that a new commission might issue, so as the words in

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Lord High Steward was made *hac vice* only. That notwithstanding the making of a Lord High Steward the Court remained the same, and was not thereby altered, but still remained the Court of Peers in Parliament. That the Lord High Steward was but as a speaker or chairman, for the more orderly proceeding at the trials.

* This resolution my Lord Chief Baron referred to and cited in his argument upon the second question proposed to the Judges, which is before stated.

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in the commission may be thus changed, viz. Instead of Ac pro eo quòd officium Seneschalli Angliæ (cujus præsentia in hac parte requiritur) ut accepimus jam vacat, may be inserted, Ac pro eo quòd proceres & magnates in Parliamento nostro assemblati, nobis humiliter supplicaverunt ut Seneschallum Angliæ pro hac vice constituere dignaremur; to which the House agreed*.

It must be admitted that precedents drawn from times of ferment and jealousy, as these were, lose much of their weight, since passion and party prejudice generally mingle in the contest; yet let it be remembered, that these are resolutions in which both Houses concurred, and in which the rights of both were thought to be very nearly concerned; the Commons right of impeaching with effect, and the whole judicature of the Lords in capital cases. For if the appointment of an High Steward was admited to be of absolute necessity (however necessary it may be for the regularity and solemnity of the proceeding

* This amendment arose from an exception taken to the commission by the Committee for the Commons, which as it then stood did in their opinion imply that the constituting a Lord High Steward was necessary. Whereupon it was agreed by the whole Committee of Lords and Commons, that the commission should be recalled, and a new commission, according to the said amendment, issue, to bear date after the order and resolution of the 12th (Commons Journal of the 15th of May.)

proceeding during the trial, and until judgment, which I do not dispute,) every impeachment may, for a reason too obvious to be mentioned, be rendered ineffectual; and the judicature of the Lords, in all capital cases, nugatory. Appx. No. 1.

It was from a jealousy of this kind, not at that juncture altogether groundless, and to guard against every thing from whence the necessity of an High Steward, in the case of an impeachment might be inferred, that the Commons proposed, and the Lords readily agreed to, the amendment in the Steward's commission, which I have already stated. And it hath, I confess, great weight with me, that this amendment, which was at the same time directed in the cases of the five Popish Lords, when commissions should pass for their trials, hath taken place, in every commission upon impeachments for treason, since that time*. And I cannot help remarking, that in the case of Lord Lovat, when neither the heat of the times, nor the jealousy of parties, had any share in the proceeding, the House ordered, "That the commission for appointing a Lord High Steward shall be in the "like form as that for the trial of the Lord Viscount

* See in the State Trials, the commissions in the cases of the Earl of Oxford, Earl of Derwentwater, and others—Lord Winton and Lord Lovat.

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" Viscount Stafford, as entered in the journal " of this House, on the 30th of November " 1680, except that the same shall be in the " English language*."

I will make a short observation on this matter.

The order, on the 13th of May 1679, for varying the form of the commission, was, as appeareth by the journal, plainly made, in consequence of the resolution of the 12th, and was founded on it; and consequently the constant unvarying practice with regard to the new form goeth, in my opinion, a great way towards shewing, that in the sense of all succeeding times, that resolution was not the result of faction, or a blameable jealousy, but was founded in sound reason and true policy. It may be objected, that the resolution of the 12th of May 1679, goeth no further than to a proceeding upon impeachment. The letter of the resolution, it is admitted, goeth no further; but this is easily accounted for: A proceeding by impeachment was the subject matter of the conference, and the Commons had no pretence to interpose in any other. But what say the Lords? The High Steward is but as a speaker or chairman, *pro tempore*, for the more orderly proceeding at the trials; the appointment

* See the proceedings printed by order of the House of Lords (4th February 1746.)

appointment of him doth not alter the nature of the court, which still remaineth the court of the Peers in Parliament. From these premises, they draw the conclusion I have mentioned. Are not these premises equally true in the case of a proceeding upon indictment?—They undoubtedly are. Appendix, No. 1.

It must likewise be admitted, that in the proceeding upon indictment, the High Steward's commission hath never varied from the ancient form in such cases. The words objected to by the Commons, *Ac pro eo quòd officium Seneschalli Angliæ (cujus præsentia in hac parte requiritur) ut accepimus jam vacat*, are still retained; but this proveth no more than that the great seal, having no authority to vary in point of form, hath from time to time very prudently followed ancient precedents.

I have already stated the substance of the commission, in a proceeding in the court of the High Steward. I will now state the substance of that in a proceeding in the court of the Peers in Parliament. And shall make use of that in the case of the Earl of Kilmarnock and others, as being the latest, and, in point of form, agreeing with the former precedents. The commission, after reciting that William Earl of Kilmarnock, &c. stand indicted before commissioners of Gaol Delivery, in the county of Surrey, for

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high treason, in levying war against the King; and that the King intendeth that the said William Earl of Kilmarnock, &c. shall be heard, examined, sentenced, and adjudged before himself, in this present Parliament, touching the said treason, and for that the office of Steward of Great Britain (whose presence is required upon this occasion) is now vacant, as we are informed, appointeth the then Lord Chancellor Steward of Great Britain, to bear, execute, and exercise (for this time) the said office, with all things due and belonging to the same office, in that behalf.

What, therefore, are the things due and belonging to the office in a case of this kind? Not, as in the court of the High Steward, a right of judicature; for the commission itself *supposeth* that right to reside in a court then subsisting before the King in Parliament. The parties are to be there heard, sentenced, and adjudged. What share in the proceeding doth the High Steward then take? By the practice and usage of the court of the Peers in Parliament he giveth his vote as a member thereof with the rest of the Peers; but for the sake of regularity and order, he presideth during the trial, and until judgment, as chairman or speaker, *pro tempore*. In that respect, therefore, it may be properly enough said, that his presence is required during the

trial, and until judgment, and in no other. Herein I see no difference between the case of an impeachment, and of an indictment. I say, during the time of the trial, and until judgment, because the court hath, as I observed before, from time to time done various acts, plainly judicial, before the appointment of an High Steward, and where no High Steward hath ever been appointed, and even after the commission dissolved. I will to this purpose cite a few cases. Appendix, No. 1.

I begin with the latest, because they are the latest, and were ruled with great deliberation; and, for the most part, upon a view of former precedents. In the case of the Earl of Kilmarnock and others, the Lords, on the 24th of June, 1746, ordered, that a writ or writs of Certiorari be issued for removing the indictments before the House; and on the 26th the writ, which is made returnable before the King in Parliament, with the return and indictments, was received and read. On the next day, upon the report of the Lords committees, that they had been attended by the two Chief Justices, and Chief Baron, and had heard them, touching the construction of the Act of the 7th and 8th of King William, "For regu- "lating trials in cases of high treason and mis- "prision of treason," the House, upon reading

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the report, came to several resolutions, founded for the most part on the construction of that Act. What that construction was, appeareth from the Lord High Steward's address to the prisoners, just before their arraignment. Having mentioned that Act, as one happy consequence of the Revolution, he addeth, "However in-"juriously that revolution hath been traduced, "whatever attempts have been made to subvert "this happy establisment founded on it, your "Lordships will now have the benefit of that "in its full extent."

I need not, after this, mention any other judicial acts done by the House in this case, before the appointment of the High Steward—many there are. For, the putting a construction upon an act relative to the conduct of the court, and the right of the subject at the trial, and in the proceedings preparatory to it, and this in a case entirely new, and upon a point, to say no more in this place, not extremely clear, was undoubtedly an exercise of authority proper only for a court having full cognizance of the cause.

I will not minutely enumerate the several orders made preparatory to the trial of Lord Lovat, and in the several cases I shall have occasion to mention, touching the time and place of the trial, the allowance or non-allowance of counsel, and other matters of the like kind,

all

all plainly judicial, because the like orders occur in all the cases where a journal of the preparatory steps hath been published by order of the Peers. With regard to Lord Lovat's case, I think the order directing the form of the High Steward's commission, which I have already taken notice of, is not very consistent with the idea of a court, whose powers can be supposed to depend, at any point of time, upon the existence or dissolution of that commission. Appendix, No. 1.

In the case of the Earl of Derwentwater, and the other Lords impeached at the same time, the House received and recorded the confessions of those of them who pleaded guilty, long before the teste of the High Steward's commission, which issued merely for the solemnity of giving judgment against them upon their conviction. This appeareth by the commission itself: It reciteth, that the Earl of Derwentwater, and others, Coram nobis in præsenti Parliamento, had been impeached by the Commons for high treason, and had, Coram nobis in præsenti Parliamento, pleaded guilty to that impeachment; and that the King, intending that the said Earl of Derwentwater and others, de & pro proditione unde ipsi ut præfertur impetit', accusit', & convict' existunt coram nobis in præsenti Parliamento, secundem legem & consuetudinem hujus regni nostri Magnæ Britanniæ, audientur,

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sententientur, & adjudicentur constituteth the then Lord Chancellor High Steward (hac vice) to do and execute all things which to the office of High Steward in that behalf do belong. The receiving and recording the confession of the prisoners, which amounted to a conviction, so that nothing remained but proceeding to judgment, was certainly an exercise of judicial authority, which no assembly, how great soever, not having full cognizance of the cause, could exercise.

See the Journals of the Lords.

In the case of Lord Salisbury, who had been impeached by the Commons for high treason, the Lords, upon his petition, allowed him the benefit of the Act of general pardon passed in the 2d year of William and Mary, so far as to discharge him from his imprisonment upon a construction they put upon that Act, no High Steward ever having been appointed in that case. On the 2d of October, 1690, upon reading the Earl's petition, setting forth that he had been a prisoner for a year and nine months in the Tower, notwithstanding the late Act of free and general pardon, and praying to be discharged, the Lords ordered the Judges to attend on the Monday following, to give their opinions, whether the said Earl be pardoned by the Act. On the 6th the Judges delivered their opinions, that if his offence was committed before the 13th of February

February 1688, and not in Ireland or beyond the seas, he is pardoned. Whereupon it was ordered, that he be admitted to bail, and the next day he and his sureties entered into a recognizance of bail, himself in 10,000*l.* and two sureties in 5,000*l.* each; and on the 30th he and his sureties were, after a long debate, discharged from their recognizance. It will not be material to enquire, whether the House did right in discharging the Earl, without giving the Commons an opportunity of being heard; since, in fact, they claimed and exercised a right of judicature without an High Steward—which is the only use I make of this case. Appendix No. 1.

They did the same in the case of the Earl of Carnwarth, the Lords Widdrington and Nairn, long after the High Steward's commission dissolved. These Lords had judgment passed on them at the same time that judgment was given against the Lords Derwentwater, Nithsdale, and Kenmure; and judgment being given, the High Steward immediately broke his staff, and declared the commission dissolved. They continued prisoners in the Tower under reprieves, till the passing of the Act of general pardon, in the 1st of King George the First. On the 21st of November 1717, the House being informed that these Lords had severally entered into Lords Journals

Appendix, No. 1.

recognizances before one of the Judges of the Court of King's Bench, for their appearance in the House in this sessions of Parliament; and that the Lords Carnwarth and Widdrington were attended accordingly; and that the Lord Nairn was ill at Bath, and could not then attend; the Lords Carnwarth and Widdrington were called; and severally at the bar, prayed that their appearance might be recorded; likewise prayed the benefit of the 3 G. 1. c. 19. Act for his Majesty's general and free pardon. Whereupon the House ordered, that their appearance be recorded, and that they attend again to-morrow, in order to plead the pardon. And the recognizance of the Lord Nairn was respited till that day fortnight. On the morrow the Lords Carnwarth and Widdrington, then attending, were called in; and the Lord Chancellor acquainted them severally, that it appeared by the records of the House, that they severally stood attainted of high treason; and asked them severally, what they had to say, why they should not be remanded to the tower of London? Thereupon they severally, upon their knees, prayed the benefit of the Act, and that they might have their lives and liberty pursuant thereunto. And the Attorney General, who then attended for that purpose, declaring that he had

objection, on His Majesty's behalf, to what was prayed, conceiving that those Lords, not having made any escape since their conviction, were entitled to the benefit of the Act; the House, after reading the clause in the Act relating to that matter, agreed that they should be allowed the benefit of the pardon, as to their lives and liberties; and discharged their recognizances, and gave them leave to depart without further day given for their appearance.

Appendix, No. 1.

See Sect. 45 of the 3 G. I.

On the 6th of December following the like proceedings were had, and the like orders made, in the case of Lord Nairn. I observe, that the Lord Chancellor did not ask these Lords what they had to say why execution should not be awarded. There was, it is probable, some little delicacy as to that point. But since the allowance of the benefit of the Act, as to life and liberty, which was all that was prayed, was an effectual bar to any future imprisonment on that account, and also to execution, and might have been pleaded as such in any court whatsoever; the whole proceeding must be admitted to have been in a court having compleat jurisdiction in the case, notwithstanding the High Steward's commission had been long dissolved—which is all the use I intended to make of this case.

I will

Appendix, No. 1.

I will not recapitulate; the cases I have cited, and the conclusions drawn from them, are brought into a very narrow compass. I will only add, it would sound extremely harsh to say, that a court of criminal jurisdiction, founded in immemorial usage, and held in judgment of law before the King himself, can in any event whatever be under an utter incapacity of proceeding to trial and judgment, either of condemnation or acquittal, the ultimate objects of every criminal proceeding, without certain supplemental powers derived from the Crown.

These cases, with the observations I have made on them, I hope sufficiently warrant the opinion of the Judges upon that part of the second question in the case of the late Earl Ferrers, which I have already mentioned. And also what was advanced by the Lord Chief Baron in his argument on that question, "That "though the office of High Steward should "happen to determine before execution done "according to the judgment, yet the court of "the Peers in Parliament, where that judgment "was given, would subsist for all the purposes "of justice during the sitting of the Parliament." And consequently that in the case supposed by the question, that court might appoint a new day for the execution.

Appendix, N° 2.

QUESTIONS referred by the LORDS to the JUDGES, in the Impeachment of WARREN HASTINGS, ESQUIRE; and the ANSWERS of the JUDGES.—Extracted from the Lords Journals and Minutes.

First.

Append. No. 2.

Question.—Whether, when a witness produced and examined in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it be competent for such prosecutor to pursue such examination, by proposing a question containing the particulars of an answer supposed to have been made by such witness before a Committee of the House of Commons, or in any other place; and by demanding of him whether the particulars so suggested were not the answer he had so made? 1788, February 29.—Pa. 418.

Answer.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges, upon the question of law put to them on Friday the 29th of February last, as follows—"That when a witness produced and "examined in a criminal proceeding by a prose-"cutor disclaims all knowledge of any matter

"so

pendix, No. 2.

" so interrogated, it is not competent for such " prosecutor to pursue such examination, by " proposing a question containing the particulars " of an answer supposed to have been made by " such witness before a Committee of the House " of Commons, or in any other place; and by " demanding of him whether the particulars " so suggested were not the answers he had " so made." 1788, April 10.—Pa. 592.

Second.

Question.—Whether it be competent for the Managers to produce an examination taken without oath by the rest of the Council in the absence of Mr. Hastings the Governor General, charging Mr. Hastings with corruptly receiving three lacks 54,105 rupees, which examination came to his knowledge, and was by him transmitted to the Court of Directors as a proceeding of the said Councillors, in order to introduce the proof his demeanor thereupon;—it being alledged by the Managers for the Commons, that he took no steps to clear himself, in the opinion of the said Directors, of the guilt thereby imputed, but that he took active means to prevent the examination by the said Councillors of his servant Cantoo Baboo?

1789, May 14.—Pa. 677.—

Answer.

Answer.—The Lord Chief Baron of the Court of Exchequer, delivered the unanimous opinion of the Judges, upon the said question, in the negative—and gave his reasons. Append No. 2

1789, May 20.—Pa. 718.

Third.

Question.—Whether the instructions from the Court of Directiors of the United Company of Merchants of England trading to the East Indies to Warren Hastings, esquire, Governor General; Lieutenant General John Clavering, the Honourable George Monson, Richard Barwell, Esquire, and Philip Francis, Esquire, Councillors, constituted and appointed the Governor General and Council of the said United Company's Presidency of Fort William in Bengal, by an Act of Parliament passed in the last session, intituled, "An Act for establishing "certain regulations for the better manage- "ment of the affairs of the East India Com- "pany, as well in India as in Europe;" of the 29th of March 1774, Par. 31, 32, and 35; the consultation of the 11th March 1775; the consultation of the 13th of March 1775, up to the time that Mr. Hastings left the Council; the consultation of the 20th of March 1775; the letter written by Mr. Hastings to the Court of Directors on the 25th of March 1775—it being alledged

pendix, No. 2. alledged that Mr. Hastings took no steps to explain or defend his conduct—are sufficient to introduce the examination of Nundcomar, or the proceedings of the rest of the Councillors on the said 13th of March, after Mr. Hastings left the Council, such examination and proceedings charging Mr. Hastings with corruptly receiving three lacks 54,105 rupees?

1789, May 21.—Pa. 730.

Answer.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges, upon the said question, in the negative—and gave his reasons.

1789, May 27.—Pa. 771.

Fourth.

Question.—Whether the public accounts of the Nizamut and Bhela, under the seal of the Begum attested also by the Nabob, and transmitted by Mr. Goring to the Board of Council at Calcutta, in a letter bearing date the 29th June 1775, received by them, recorded without objection on the part of Mr. Hastings, and transmitted by him likewise without objection to the Court of Directors, and alledged to contain accounts of money received by Mr. Hastings; and it being in proof that Mr. Hastings, on the 11th of May 1778, moved the board to comply with the requisitions of the Nabob Mowbarek ul Dowla,

Dowla, to re-appoint the Munny Begum, and Rajah Goordass (who made up those accounts) to the respective offices they before filled—and which was accordingly resolved by the board—ought to be read? Appendix, No. 2.

1789, June 17.—Pa. 855.

Answer.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges, upon the said question, in the negative—and gave his reasons.

1789, June 24.—Pa. 922.

Fifth.

Question.—Whether the paper delivered by Sir Elijah Impey, on the 7th of July 1775, in the Supreme Court, to the Secretary of the Supreme Council, in order to be transmitted to the Council as the resolution of the Court in respect to the claim made for Roy Radachurn, on account of his being Vakeel of the Nabob Mobarek ul Dowlah—and which paper was the subject of the deliberation of the Council on the 31st July 1775, Mr. Hastings being then present, and by them transmitted to the Court of Directors, as a ground for such instructions from the Court of Directors as the occasion might seem to require—may be admitted as evidence of the actual state and situation of the Nabob,

Appendix, No. 2.

Nabob, with reference to the English Government? 1789, July 2.—Pa. 1001.

Answer.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges, upon the said question, in the affirmative—and gave his reasons.

1789, July 7.—Pa. 1030.

Sixth.

Question.—Whether it be, or be not, competent to the Managers for the Commons to give evidence upon the charge in the sixth article, to prove that the rent at which the defendant, Warren Hastings, let the lands mentioned in the said sixth article of charge, to Kelleram, fell into arrear and was deficient—and whether, if proof were offered that the rent fell into arrear immediately after the letting, the evidence would in that case be competent.

1790, April 22.—Pa. 364.

Answer.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question—"That "it is not competent to the Managers for the "Commons to give evidence upon the charge "in the sixth article, to prove that the rent at "which the defendant, Warren Hastings, let

"the

" the lands mentioned in the said sixth article
" of charge to Kelleram, fell into arrear, and
" was deficient"—and gave his reasons.

1790, April 27.—Pa. 388.

Seventh.

Question.—Whether it be competent for the Managers for the Commons to put the following question to the witness upon the sixth article of charge; viz. " What impression the letting
" of the lands to Kelleram and Cullian Sing
" made on the minds of the inhabitants of that
" country?" 1790, April 27.—Pa. 391.

Answer.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question—" That
" it is not competent to the Managers for the
" Commons to put the following question to the
" witness, upon the sixth article of charge; viz.
" What impression the letting of the lands to
" Kelleram and Cullian Sing made on the minds
" of the inhabitants of that country"—and gave his reasons. 1790, April 29.—Pa. 413.

Eighth.

Question.—Whether it be competent to the Managers for the Commons to put the following question to the witness, upon the seventh article

Appendix, N° 2.

of charge; viz. "Whether more oppressions did "actually exist under the new institution than "under the old?"

1790, April 29.—Pa. 415.

Answer.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question, "That it "is not competent to the Managers for the "Commons to put the following question to the "witness, upon the seventh article of charge; "viz. Whether more oppressions did actually "exist under the new institution than under the "old"—and gave his reasons.

1790, May 4.—Pa. 428.

Ninth.

Question.—Whether the letter of the 13th April 1781 can be given in evidence by the Managers for the Commons, to prove that the letter of the 5th of May 1781, already given in evidence, relative to the abolition of the provincial council, and the subsequent appointment of the committee of revenue, was false in any other particular than that which is charged in the 7th article of charge?

1790, May 20.—Pa. 557.

Answer.—The Lord Chief Baron of the Court of

of Exchequer delivered the unanimous opinion of the Judges upon the said question—" That " it is not competent for the Managers on the " part of the Commons to give any evidence on " the seventh article of impeachment, to prove " that the letter of the 5th May 1781 is false in " any other particular than that wherein it is " expressly charged to be false"—and gave his reasons. 1790, June 2.—Pa. 634. Append N° 2.

Tenth.

Question.—Whether it be competent to the Managers for the Commons to examine the witness to any account of the debate which was had on the 9th day of July 1778, previous to the written minutes that appear upon the consultation of that date?

1794, February 25.—Lords Minutes.

Answer.—The Lord Chief Justice of the Court of Common Pleas delivered the unanimous opinion of the Judges upon the said question—" That it is not competent to the Managers for " the Commons to examine the witness, Philip " Francis, esquire, to any account of the debate " which was had on the 9th day of July 1778, " previous to the written minutes that appear

Appendix, N° 2. "upon the consultation of that date"—and gave his reasons.

1794, February 27.—Lords Minutes.

Eleventh.

Question.—Whether it is competent for the Managers for the Commons, in reply, to ask the witness, whether, between the time of the original demand being made upon Cheit Sing, and the period of the witness's leaving Bengal, it was at any time in his power to have reversed or put a stop to the demand upon Cheit Sing; the same not being relative to any matter originally given in evidence by the defendant?

1794, February 27.—Lords Minutes.

Answer.—The Lord Chief Justice of the Court of Common Pleas delivered the unanimous opinion of the Judges upon the said question—"That it is not competent for the Managers for "the Commons to ask the witness, whether, "between the time of the original demand being "made upon Cheit Sing and the period of his "leaving Bengal, it was at any time in his power "to have reversed or put a stop to the demand "upon Cheit Sing, the same not being relative "to any matter originally given in evidence by "the defendant"—and gave his reasons.

1794, March 1.—Lords Minutes.

Twelfth.

Appendix, N° 2.

Twelfth.

Question.—Whether a paper, read in the Court of Directors on the 4th of November 1783, and then referred by them to the consideration of the Committee of the whole Court; and again read in the Court of Directors on the 19th of November 1783, and amended, and ordered by them to be published for the information of the Proprietors, can be received in evidence, in reply, to rebut the evidence given by the Defendant, of the thanks of the Court of Directors, signified to him on the 28th of June 1785.

1794, March 1.—Lords Minutes.

Answer.—Whereupon the Lord Chief Justice of the Court of Common Pleas, having conferred with the rest of the Judges present, delivered their unanimous opinion upon the said question, in the negative—and gave his reasons.

1794, March 1.—Lords Minutes.

END OF THE FOURTEENTH VOLUME.

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